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COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\* \* \* \* \*

COMMONWEALTH OF MASSACHUSETTS

VS.

Indictment No.  
2282CR00117

KAREN READ

\* \* \* \* \*

Day 18 - Trial with Jury  
Before the Honorable Beverly Cannone

APPEARANCES:

For The Commonwealth:

BY: Adam Lally  
Laura McLaughlin  
Assistants District Attorney

For Karen Read:

BY: Alan Jackson  
David Yannetti  
Elizabeth Little  
Attorneys at Law

Norfolk Superior Courthouse  
Dedham, Massachusetts  
Wednesday, May 15, 2024

Paula M. Mills  
Retired Certified Court Reporter  
and Court Transcriptionist

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P R O C E E D I N G SMay 15, 2024

(Court in session at 9:12 a.m.)

(Defendant present. Jury not present.)

THE CLERK: 22-117, the Commonwealth versus  
Karen Read.

Counsel, would you come to sidebar, please?  
(Whereupon, there was a sidebar conference as  
follows:)

MR. LALLY: Good morning, Your Honor.

THE COURT: Good morning.

MR. JACKSON: Good morning, Judge.

THE COURT: You have to stop being late.  
Really.

MR. JACKSON: I just want to put very briefly  
on the record.

THE COURT: Why don't you step aside.

MR. YANNETTI: Of courses. Yes.

MR. JACKSON: I just wanted to put very  
briefly on the record with regard to Ms. Kun. We  
want to interpose an objection just for the record  
in terms in terms of her testifying before the  
foundation has been properly laid. I sort of  
expected it. I knew that she was going to be taken  
out of order. Mr. Lally let us know that, but I

1 expected --

2 THE COURT: Because of a (c) Is  
3 that what it is?

4 MR. LALLY: Yes.

5 MR. JACKSON: I have no problem with that  
6 whatsoever. I just want to make sure that I didn't  
7 waive any objection if the later foundation for her  
8 testimony is not established. I think it will be.

9 THE COURT: If it's not established, move to  
10 strike it.

11 MR. JACKSON: Okay. That's what I wanted to  
12 make sure of. That's all. Thank you.

13 THE COURT: Okay.

14 MS. MC LAUGHLIN: While we are here, one more  
15 thing, Your Honor?

16 THE COURT: Sure. Of course. Move aside,  
17 Mr. Lally.

18 MS. MC LAUGHLIN: Based on the Court's order  
19 yesterday, the Commonwealth did review the  
20 Professional Rules of Code of Conduct.

21 THE COURT: Okay.

22 MS. MC LAUGHLIN: The Commonwealth did not  
23 find any rule that pertained to the situation or  
24 the issue that defense counsel raised. The closest  
25 thing would have been Professional Rule of Conduct

1 3.4(a), discussing an attorney's duty not to  
2 obstruct evidence. That's not what the  
3 Commonwealth did nor intended to do, and there's no  
4 cases citing that rule for any proposition or  
5 supposed issue raised by the defense.

6 However, given the Court's broad discretion,  
7 the Commonwealth, myself and ADA Lally will abide  
8 by the Court's order as it likely falls within the  
9 Judge's broad discretion pursuant to Criminal  
10 Procedure Rule 21 and sequestration.

11 So myself and ADA Lally will abide by the  
12 Court order as I presume defense counsel will, as  
13 well.

14 THE COURT: Okay. Unlike all of you, I have  
15 never been a prosecutor. All right. Are you still  
16 moving for that, Mr. --

17 MR. JACKSON: Yes, Your Honor. We are.  
18 Anybody from the Commonwealth's team, their  
19 investigators, their victim advocates, the trial  
20 team, themselves. Nobody from the Commonwealth,  
21 just like nobody from the defense, their victim  
22 advocates, the trial team, themselves, nobody from  
23 the Commonwealth, just like nobody from the defense  
24 should be engaging a witness who is currently under  
25 oath during the breaks, you know, overnight and

1 things of that nature. It's just not done.

2 THE COURT: I think investigators is a little  
3 too broad, police not allowed to talk to witnesses.

4 MR. JACKSON: Not while they are on the stand,  
5 not while they are under oath.

6 THE COURT: What do you say?

7 MS. MC LAUGHLIN: There is no rule that  
8 suggests that. If that's the Court's order, the  
9 Commonwealth would abide by it. However, I feel as  
10 if victim witness advocates need to be able to  
11 speak to the witnesses. As it came up in this  
12 case, you know, our witness was confronted about a  
13 conversation they had with a member of the  
14 Commonwealth, and their answer was they asked me if  
15 I wanted any water.

16 So I think to effectively, you know, move the  
17 trial forward, you know, advocates or witness  
18 people need to be able to ask people do they know  
19 where the bathroom is or you're going to be next up  
20 in five minutes. Just normal ability to facilitate  
21 the time management of the trial.

22 MR. JACKSON: To be clear, that's not what I'm  
23 objecting to. I'm objecting to any interviews or  
24 discussion of the substance of their testimony.  
25 Asking where the bathroom is, what time do you need

1 to be here, can I have some water, I have no  
2 problem with that.

3 THE COURT: How long your testimony is going  
4 to be.

5 MR. JACKSON: Correct. I mean, you're going  
6 to be another hour, I have no problem with that. I  
7 just don't think it's appropriate to talk to them  
8 about "I'm going to ask you these questions. I  
9 expect Mr. Jackson" --

10 THE COURT: Yes. I don't think that's proper  
11 either. I may be wrong. But I do know sometimes  
12 things come up during trial that a police officer  
13 has to go out and find a witness or approach a  
14 witness or something based on something that's been  
15 said. So I don't want to tie the strings of law  
16 enforcement.

17 I was concerned you raised it regarding the  
18 lawyer, Mr. Lally, and that's what I addressed.

19 MR. JACKSON: Right.

20 THE COURT: So, Mr. Lally, you're not to flag  
21 the witnesses what you're going to examine them on  
22 or do redirect on or any other substance of what  
23 you're going to do.

24 MR. LALLY: Understood, Your Honor. Just so  
25 the record is clear, that is not what happened in



1 this particular case. I went to tell the witness,  
2 this one being Mr. Albert, how much I anticipated  
3 he would be left on the stand. He asked me a  
4 question as far as are you going to cover this in  
5 your direct. And I said "yes." There was no  
6 substantive conversation about I'm going to ask you  
7 this or Mr. Jackson may ask you that or anything  
8 along the lines. But, whatever the Court's ruling  
9 is, obviously, the Commonwealth will abide by  
10 whatever the Court tells us to do.

11 THE COURT: My understanding has always been  
12 when a witness is on the stand, you can't discuss  
13 anything of any substance with that witness.

14 MR. LALLY: I understand.

15 THE COURT: And that's what I always thought  
16 and that's what I believe. We will leave it at  
17 that.

18 MS. MC LAUGHLIN: Thank you.

19 MR. JACKSON: Thank you.

20 (Whereupon, the sidebar conference concluded.)

21 THE COURT: Good morning. Would you bring the  
22 jurors in?

23 (Whereupon, the jury is escorted into the courtroom  
24 and seated in the jury box.)

25 THE CLERK: 22-117, Commonwealth versus

1 Karen Read.

2 THE COURT: Good morning, again, counsel.  
3 Good morning, Ms. Read. Good morning, jurors. We  
4 appreciate you being ready. We have just been  
5 delayed.

6 I have to ask you those three questions. Were  
7 you all able to follow the instruction to refrain  
8 from discussing this case?

9 Everyone said "yes" or nodded affirmatively.

10 Did you also follow the instruction to refrain  
11 from doing any independent research or  
12 investigation into this case?

13 Everyone said "yes" or nodded affirmatively.

14 Did anyone happen to see, hear or read  
15 anything about this case?

16 Everyone said "no" or shook their head. Thank  
17 you.

18 May we have Ms. Nagel, please?

19 Whereupon,

20 JULIANA NAGEL, Resuming

21 having been first duly sworn, was examined and  
22 testified under oath as follows:

23 THE COURT: Thank you. Mr. Lally?

24 MR. LALLY: Yes, Your Honor.

25 CONTINUED REDIRECT EXAMINATION

1 BY MR. LALLY:

2 Q Good morning, Ms. Nagel.

3 A Good morning.

4 Q Just a few questions for you. In regard to  
5 the interview or the conversation that you had with  
6 Trooper Proctor, were there any other troopers present  
7 during the course of that interview or conversation?

8 A Yes.

9 Q Do you recall who that trooper was?

10 A I can't recall his name, no.

11 Q Now, if I could turn your attention back to  
12 January 29th in the early morning when you were leaving  
13 the house on Fairview. You indicated that you saw a  
14 dark object in an area of the front lawn; is that  
15 correct?

16 A Yes.

17 Q Now, you had been through the house at 34  
18 Fairview on several different occasions prior to this  
19 date, correct?

20 A Yes.

21 Q Had you ever been over in that area of that  
22 front lawn? Was that an area that was used that you  
23 observed by the homeowners or anyone there?

24 A Not really, no.

25 Q And what, if anything, do you recall about the

1 lighting in that particular area of the yard?

2 A I mean, it was dark out. But, with the snow,  
3 you could see a little bit of the glare.

4 Q Do you recall any sort of streetlights or  
5 anything like that in that area?

6 A I can't recall. No.

7 Q Now, you see this object which you described  
8 as approximately five to six feet long; is that right?

9 A Yes. Correct.

10 Q In the area of the flagpole; is that correct?

11 A Yes.

12 Q And, at the time that you saw it, were you  
13 expecting or anticipating something over in that area  
14 of the yard?

15 A No.

16 Q And, when you were driving past it, is that  
17 the first time that you saw it?

18 A Yes.

19 Q Now, if you had realized or had recognized  
20 that dark object five to six feet long in the area near  
21 the flagpole, had you realized that was a body, what  
22 would you have done?

23 MR. YANNETTI: Objection.

24 THE COURT: I'll allow it.

25 THE WITNESS: I would have, you know, called

1 911 if I thought it was an actual body and told  
2 everybody else in the car, as well.

3 BY MR. LALLY:

4 Q And your testimony again was that you put sort  
5 of two and two together the following day, correct?

6 A Yes.

7 MR. LALLY: I have nothing further, Your  
8 Honor.

9 THE COURT: Okay.

10 RE CROSS-EXAMINATION

11 BY MR. YANNETTI:

12 Q So if you realized it was a body, you would  
13 have called 911, correct?

14 A Yes.

15 Q And that's because you would have realized  
16 that was very important information, correct?

17 MR. LALLY: Objection.

18 THE COURT: I'll allow it.

19 THE WITNESS: I'm sorry. Can you repeat the  
20 question?

21 BY MR. YANNETTI:

22 Q If you realized it was a body, you would have  
23 realized that was very important information, correct?

24 A Yes.

25 Q And your testimony today is that you realized

1 it was a body the very next day, correct?

2 A The next day after, I had a conversation, yes.

3 Q You didn't call 911 at that point, correct?

4 A I did not, no.

5 Q Did you call the police business line?

6 A I did not, no.

7 Q Did you speak to any police?

8 A No.

9 Q Right. And you would agree with me,  
10 Ms. Nagel, that object became five or six feet long  
11 yesterday for the first time?

12 MR. LALLY: Objection.

13 THE COURT: Ask the question differently.

14 BY MR. YANNETTI:

15 Q The first time you mentioned to anybody that  
16 that object was five to six feet long was yesterday to  
17 this jury, two and a half years after you supposedly  
18 saw it, correct?

19 A Yes.

20 MR. YANNETTI: Nothing further.

21 THE COURT: All right, Ms. Nagel. You are all  
22 set. Thank you very much.

23 THE WITNESS: Thank you.

24 (Whereupon, the witness is excused.)

25 THE COURT: Next witness, please, Mr. Lally.

1 MR. LALLY: Yes, Your Honor. The Commonwealth  
2 calls Ms. Teri Kun to the stand.

3 THE COURT: While she is coming in, can I  
4 see counsel just about this witness, please?  
5 Mr. Jackson, Mr. Yannetti, Ms. Little?

6 MR. YANNETTI: I'm sorry.  
7 (Whereupon, there was a sidebar conference as  
8 follows:)

9 THE COURT: So I know sometimes I do tell  
10 jurors that the witness is out of order. Is there  
11 any reason to fear or anything?

12 MR. LALLY: I think I would prefer it just  
13 because I think I would --

14 THE COURT: Is there an objection to it?

15 MR. YANNETTI: No.

16 THE COURT: And then I can just say sometimes  
17 schedules make it such that we have to have  
18 witnesses testify out of order. All right. Thank  
19 you.

20 MR. LALLY: Thank you, Your Honor.  
21 (Whereupon, the sidebar conference concluded.)

22 THE COURT: So, jurors, before this next  
23 witness testifies, I just want to tell you that  
24 sometimes we call witnesses out of order.  
25 Sometimes witnesses have to be called at a certain

1           time frame because of their schedules or some other  
2           instance, and the lawyers were kind enough to work  
3           this out among themselves. We appreciate it.

4   Whereupon,

5                               TERI KUN

6   having been first duly sworn, was examined and  
7   testified as follows:

8           THE COURT: Mr. Lally, whenever you are ready.

9           MR. LALLY: Thank you, Your Honor.

10                           DIRECT EXAMINATION

11   BY MR. LALLY:

12           Q    Good morning, ma'am.

13           A    Good morning.

14           Q    Could you please state your name and spell  
15   your last name for the jury?

16           A    It's Teri Kun. It's T-E-R-I K-U-N.

17           Q    And, Ms. Kun, what do you do for work?

18           A    I work for UC Davis of the veterinary genetics  
19   lab in the forensics unit.

20           Q    And what is your job title there?

21           A    My job title is forensic scientist/DNA  
22   technical lead. My UC classification is SRA-4.

23           Q    And that UC classification as far as SRA-4,  
24   what does that mean?

25           A    Oh. Staff research associate.



1 Q And how long have you worked there?

2 A Almost 25 years now.

3 Q And, if I could, I'd like to talk a little bit  
4 about your educational background, starting with  
5 undergraduate. Where did you go and what, if any,  
6 degree did you receive there?

7 A So I went to Sacramento State or California  
8 State University Sacramento. I received a minor in  
9 chemistry and a biological science degree in molecular  
10 biology.

11 Q And, following receiving those degrees, where  
12 did you go educationally from there?

13 A I went to UC Davis, and I received a master of  
14 science degree in forensic science/DNA.

15 Q And was that prior to you joining the lab  
16 there or what, if any, relationship did that have?

17 A I actually started my job at the lab after my  
18 undergraduate degree in 1999, and I started my post-  
19 graduate degree, I believe, in 2009 and finished in  
20 2011. So I was actually already working at the lab at  
21 that time.

22 Q Now, with regard to the forensic program at  
23 UC Davis, what, if any, role did you have in sort of  
24 the creation of that lab?

25 A I was actually one of the people who helped

1 establish our forensics program in our lab, and I  
2 currently help with all the training any future  
3 forensic scientists that we employ. I do their  
4 training, as well.

5 Q Now, have you been invited to speak at any  
6 sort of conferences or things of that nature in regard  
7 to your work in forensic science?

8 A Yes. I've spoken at the California  
9 Association of Criminalists, the American Academy of  
10 Forensic Sciences, the Northwestern Forensic Sciences  
11 and Rural Livestock in the Western States.

12 Q Now, have you been published in this  
13 particular area?

14 A Yes. I've published seven times, most of them  
15 in forensic science/international genetics.

16 Q And, when it comes to those publications, are  
17 you familiar with a process called peer review?

18 A Yes.

19 Q And can you explain to the jury sort of what  
20 that process entails and how that implicates things  
21 that are published?

22 A So anytime we go to publish, we put out an  
23 article to whatever publication we would like to, and  
24 it goes through a peer review process, which the  
25 article is sent out to peers in our industry. And they

1 review our work to see that it is solid. And, if they  
2 approve it, then the article does get published.

3 Q Now, over the course of your years with the  
4 lab at UC Davis, how many forensic samples of DNA have  
5 you tested?

6 A Oh, in the thousands.

7 Q Now, if you could describe for the jury the  
8 type of work that your lab performs?

9 A So we have two sides of our lab. We have a  
10 service side which provides diagnostic testing, parent  
11 verification testing. And then we have our forensics  
12 side. We do animal parent verification, as well. We  
13 also do match comparison, which we compare samples to  
14 see if they are coming from the same source. And we do  
15 species identification.

16 Q Now, what kind of cases do you typically see  
17 like in the lab?

18 A We can do anything from homicides to helping  
19 people see if remains are their lost pet to provide  
20 closure for them.

21 Q And are there sort of different types of  
22 agencies that you've done work for over the years of  
23 your work with the lab?

24 A We worked for police agencies, humane  
25 agencies, animal control agencies and even private

1 individuals. Anybody who believes they can use our  
2 services.

3 Q And the lab that you work for, UC Davis, is  
4 that lab accredited?

5 A Yes, it is.

6 Q I'm sorry. Here is my next question: As far  
7 as the lab accreditation, can you explain to the jury  
8 sort of what that process is and what's entailed in  
9 accreditation?

10 A So our lab is accredited by a group ANAB. And  
11 that's the American National Standards Institute  
12 national accreditation. They accredit labs to ensure  
13 that the policies and procedures that we are following,  
14 they set a standard for those. And they come and check  
15 our standards; are we meeting those standards. And  
16 it's also the same standards that most crime labs are  
17 associated with.

18 Q Now, in reference to that, labs that do DNA  
19 testing specifically and only in regard to humans, the  
20 accreditation that your lab has versus the  
21 accreditation that those types of lives have, what, if  
22 any, differences are there between those?

23 A There is no difference. The accreditation is  
24 the same.

25 Q Now, if you could, explain to the jury, what

1 exactly is DNA.

2 A So DNA is the blueprint of your life. It's  
3 what makes your eye color what it is. It makes your  
4 hair color, how tall you're going to be. And you get  
5 one-half of that from your mom and one-half from your  
6 dad.

7 Q And where is DNA found?

8 A So DNA is found in most cells. It's in the  
9 nucleus of the cell. You get one copy of DNA per cell.  
10 There is also another kind of DNA called mitochondrial  
11 DNA. And in a cell, that is found in the plasma of the  
12 cell. And there will be thousands of copies of  
13 mitochondrial.

14 Q And if you could explain sort of the  
15 difference between mitochondrial DNA versus -- what  
16 would you classify the other type of DNA as?

17 A So nuclear DNA is again that individual type  
18 of DNA. It's the DNA where we could say that that's  
19 you or that's a particular animal. And it would be a  
20 statistic of, you know, one in 3,000 -- or one in 350  
21 million.

22 Mitochondrial DNA actually runs along the  
23 maternal line. So if, you know, you're a mom and you  
24 have a couple kids and your grandma there, they would  
25 all share the same maternal type.

1 Q And how is DNA used in forensic science?

2 A For what we do in forensic science for animal  
3 DNA, we'd use it for parent verification. We use it  
4 for determining if two samples come from the same  
5 source. And we use it for species identification.

6 Q And is DNA testing just generally accepted in  
7 the scientific community?

8 A Yes, it is.

9 Q And can you explain for the jury sort of DNA  
10 typing, that process? How does that work? What is it  
11 sort of specifically that you do?

12 A So the main steps are when we get a sample, we  
13 need to lyse open the cells. That DNA is in the center  
14 of the cell. There's mitochondrial there, but they're  
15 protected by a cell wall. So our first step is to lyse  
16 that cell wall and release the DNA.

17 Once that is done, we want to see how much DNA  
18 that we have. And so we have something called qPCR or  
19 quantitative PCR. That allows us to tell how much of  
20 that nuclear DNA is in a sample.

21 From there, we would go to our DNA typing. As  
22 you can imagine, if you only have one copy of DNA in a  
23 cell, it would take a lot of cells to be able to  
24 visualize that DNA. So we have to go through a process  
25 of making multiple copies.

1           We use something called pointers. It tells us  
2 what parts of the DNA that we're looking for. That can  
3 vary from species to species or from test to test of  
4 what we are trying to do, and we amplify that in a  
5 process called PCR. You can think of it like a  
6 photocopier. Every time it goes through a cycle, it  
7 makes a copy. So if we start off with one copy, we get  
8 two. From two, we get four. Four, we get eight. And,  
9 by the end of this cycling, we have millions of copies  
10 that actually allow us to be able to visualize that  
11 DNA.

12           And then the last step is actually visualizing  
13 it. The DNA actually has to run through a matrix.  
14 It's kind of like a sponge with all the little holes.  
15 Small pieces of DNA go out first, and we can see those  
16 first. And the larger pieces of DNA come out last. So  
17 it's allowing us to both see the DNA and it separates  
18 it by size.

19           Q     And did you do the forensic testing with  
20 regard to samples that were submitted to your lab in  
21 this case?

22           A     Yes, I did.

23           Q     And, as far as those steps as you just  
24 described, are those the steps that you followed in  
25 regard to this case?

1           A     Yes, they were.

2           Q     Do you have sort of standard procedures for  
3 what you do in the lab?

4           A     Yes. We have standard procedures or SOPs that  
5 we follow for all of our work that we do

6           Q     And so fair to say in this case, you followed  
7 those same sort of standard procedures and protocols?

8           A     Yes, I did.

9           Q     Now, what, if any, efforts are taken in your  
10 lab to preserve the evidence or prevent contamination?

11          A     So what we do to preserve evidence, prevent  
12 contamination, one of the things we use is a bleach  
13 product. So any time we are using a surface, be it for  
14 sample collection, doing PCR or doing the extraction,  
15 we are wiping down everything with this bleach product,  
16 doing our work and then wiping it down again.

17                 Samples are stored according to what we have.  
18 So dry evidence is stored in a locked cabinet. Wet  
19 evidence such as blood is stored in a fridge. Tissue  
20 is stored in a locked freezer. The fridge is also  
21 locked, as well. And they are also kept in their  
22 original packaging, and they are sealed. And they are  
23 only unsealed and used when they're being actually  
24 manipulated for sample collection.

25          Q     And what samples did you receive in this case?



1           A     In this case, we received two swabs.

2           MR. LALLY: Your Honor, may I have just a  
3 moment?

4           THE COURT: Yes.

5           MR. LALLY: Your Honor, may I approach the  
6 witness?

7           THE COURT: Yes.

8 BY MR. LALLY:

9           Q     Ms. Kun, I'm showing you a series of seven  
10 photographs. I'd just ask you to look at those and  
11 then look up at me.

12          A     (Witness complies.) Okay.

13          Q     And just in general terms, do you recognize  
14 what's depicted in those seven photographs?

15          A     Yes. This is the evidence that we received.

16          Q     Okay. Are those photographs that you would  
17 have taken as you were unpackaging the samples in this  
18 case?

19          A     Yes. And, actually, they contain a sticker on  
20 there that has our case number, the date we received  
21 and my initials.

22          MR. LALLY: May I approach again, Your Honor?

23          THE COURT: Yes.

24          MR. LALLY: The Commonwealth would seek to  
25 introduce them as the next exhibits.

1 MR. JACKSON: No objection.

2 (Whereupon, photographs of packaging and items  
3 inside were entered and marked Exhibits No. 74  
4 through and including 80 in Evidence.)

5 THE COURT REPORTER: Exhibits 74 through 80,  
6 Your Honor.

7 THE COURT: Thank you.

8 MR. LALLY: Thank you. Your Honor, may I  
9 return these to the witness and, with the Court's  
10 permission, may I publish them to the jury?

11 THE COURT: Yes.

12 BY MR. LALLY:

13 Q Ms. Kun, I am now placing before you -- what  
14 I've placed before you has now been marked Exhibits 74  
15 through 80. With regard to the first exhibit that you  
16 have before you, what is up on the screen, is that what  
17 you have before you as Exhibit 74?

18 A Yes, it is.

19 Q And can you describe to the jury what we are  
20 looking at in this particular photograph?

21 A So this is the evidence that we received. The  
22 little sticker on the bottom is the one that we applied  
23 in our lab. It includes the case number, the date and  
24 my initials. And we do this to ensure that this is how  
25 the evidence arrived; it arrived in a sealed and

1 packaged container.

2 Q And the following Exhibit No. 75, that's  
3 essentially another photograph of the same packaging;  
4 is that correct?

5 A So it's the same packaging, but it's the back  
6 of the packaging, given in this instance that actually  
7 shows where the evidence is sealed, as well, and the  
8 date, as well.

9 Q And who, if anyone, or what entity did you  
10 receive this package from?

11 A Can I look at my notes? I don't really recall  
12 the exact --

13 THE COURT: Yes.

14 MR. LALLY: Thank you.

15 THE WITNESS: So the client in this case was  
16 the Norfolk County District Attorney's Office,  
17 Adam Lally.

18 BY MR. LALLY:

19 Q But as far as the samples from whom you  
20 received, was that the Massachusetts State Police Crime  
21 Lab?

22 A They were the people I was in contact with  
23 about sending them. We consider the client as the one  
24 who submitted the sample on our submission form.

25 Q Okay. But the person who physically sent the

1 sample from one lab to the other was the MSPCL; is that  
2 correct?

3 A Let me see here. I'm sorry. There was a form  
4 that came with it, as well. Let me find it.

5 So yes. The Commonwealth of Massachusetts  
6 Department of State Police Forensic Services Division  
7 Crime Lab was the one who submitted the samples to our  
8 lab.

9 Q And are you familiar with or did you have any  
10 conversations with a forensic scientist at the state  
11 police lab in Massachusetts named Maureen Hartnett?

12 A Yes, I did.

13 Q Is that someone that you had worked with on  
14 prior cases in the past?

15 A Yes, I have.

16 Q Now, if I could direct your attention to the  
17 next before you, No. 76. And, again, what's up on the  
18 screen, is that what you have before you?

19 A Yes.

20 Q And, if you could, just describe to the jury  
21 what we are looking at in this photograph.

22 A So that brown packaging you saw before, this  
23 is actually what was inside of that brown packaging.

24 Q And the next exhibit?

25 A And this is that same item that was inside but

1 the backside of the packaging.

2 MR. LALLY: Ms. Gilman, if I could ask you to  
3 scroll down a little bit.

4 THE WITNESS: And that shows the two swabs  
5 that were contained inside that packaging.

6 BY MR. LALLY:

7 Q And this photograph?

8 A And that was the first swab that we selected  
9 for testing.

10 Q What is contained in those photographs, is  
11 that a fair and accurate portrayal of what you received  
12 and sort of how you delineated those items as far as  
13 labeling them by your case number?

14 A Yes, it was.

15 Q And for the case number as far as the FCD and  
16 the number, sort of how is that determined or what does  
17 that mean?

18 A So FC always refers to forensic case. In this  
19 case, D is for dog, because they were asking for dog  
20 DNA testing. If it were C, it would be for cattle. F  
21 would be for feline. But the FC is always the  
22 beginning part. The third letter always kind of  
23 denotes what species we are looking for.

24 Q Now, pursuant to receiving those particular  
25 items, are you also given any sort of identifier as far

1 as from the outside lab or the external vendor as far  
2 as what label they have for the sample or where the  
3 sample came from from the outside lab?

4 A We did receive a piece of paper with this  
5 submission saying it was taken from a shirt.

6 Q Do you recall specifically what the item  
7 number was or where it was swabbed on that shirt?

8 MR. JACKSON: Objection.

9 THE COURT: Do you remember that?

10 THE WITNESS: I do not. It would be on that  
11 piece of paper, I believe.

12 BY MR. LALLY:

13 Q Would that also be delineated somewhere within  
14 your report and your findings?

15 A The case number would be in our findings.

16 Q I'm sorry. Not specifically in your findings  
17 but within the context of your report, would that --

18 A In the report, the case number that they gave  
19 us is listed in the report.

20 Q Do you have your report with you, ma'am?

21 A Yes, I do.

22 MR. LALLY: Your Honor, with the Court's  
23 permission, I would ask that the witness be allowed  
24 to refer to her report for that information.

25 THE COURT: Yes.

1 THE WITNESS: Yes.

2 BY MR. LALLY:

3 Q And I'm sorry. What is that again?

4 A Did you want the case number there?

5 Q The case number and the item number, if you  
6 could.

7 A So the case number is listed as MSCLP No. 22-  
8 02184, Item 7-18.16.

9 Q Now, Ms. Kun, with reference to these samples,  
10 did the samples arrive as you expected as far as their  
11 packaging and things of that nature?

12 A Yes. Everything arrived sealed and, as you  
13 saw, it was documented with our photos, and it's also  
14 documented in my notes.

15 Q Okay. And did you test all of the samples  
16 that were submitted, ma'am?

17 A Yes, we did.

18 Q And what is it that you were asked to test?

19 A We were asked to determine species via canine  
20 qPCR. qPCR is that quantitative PCR that tells us how  
21 much DNA is in a sample, and it is specific for canine  
22 because the next goal they asked is if we could develop  
23 a DNA profile to possibly use for a comparison with a  
24 reference sample to be submitted later.

25 If we weren't able to see anything with canine

1 DNA there, we were asked to do our species test, called  
2 meat I.D.

3 Q Now, first with reference to the sort of  
4 nuclear DNA testing that you did, what were the results  
5 of this initial testing?

6 A For the canine qPCR testing, we did not see  
7 any canine DNA.

8 Q And, when you say -- if you could explain to  
9 the jury or expound upon that as far as what are you  
10 looking at and what are you seeing or not seeing that  
11 leads you to that opinion.

12 A So the canine DNA we're looking for in that is  
13 that nuclear DNA, that DNA that's used for an  
14 individual because the idea was if we can get -- if we  
15 see canine DNA in the quantitative qPCR, then we know  
16 we have canine DNA on that swab and we can try and use  
17 that to develop the DNA profile for a later comparison.

18 Q Now, per the questions you were asked or what  
19 you were asked to test upon not finding any canine DNA  
20 from the PCR testing or the qPCR testing, what, if any,  
21 steps did you take next or what, if any, further  
22 testing was done.

23 A The next test we performed was our meat I.D.  
24 test. It's a general species test. It tests for 12  
25 species altogether. They would include dog, cat,



1     Bison, cow, horse, sheep, goat, mouse, rat, pig and  
2     others. I'm pretty sure we got them all but I can't  
3     guarantee.

4           Q     Now, -- and I'm sorry to jump around here a  
5     little bit. But, when going back to sort of the qPCR  
6     testing, can you explain to the jury sort of what is it  
7     -- what type of instruments are you using and what  
8     exactly goes into that process?

9           A     So we are taking the sample, and we are using  
10    primers that concentrate the .2 small piece of DNA for  
11    canine, and it's supposed to amplify it. And, every  
12    time it's amplifying, it's actually releasing a color,  
13    a fluorescent color, that it's measuring. So if  
14    there's canine DNA, this fluorescent color keeps  
15    popping up and popping up. And it gives it a  
16    measurement in which it will tell us how much of the  
17    canine DNA we have. But, in this case, the test did  
18    not see any fluorescence for canine DNA. So it was a  
19    negative result.

20          Q     And then as far as when you say canine DNA, is  
21    that dog, specifically, or what, if anything else,  
22    would be included within canine?

23          A     In this qPCR test, other canines will work or  
24    canids will work like wolves, coyotes. And we are now  
25    doing some further testing on foxes, but we have not

1 concluded those tests.

2 Q Now, as far as the meat I.D. test that you're  
3 talking about, that sort of second, can you explain  
4 again to the jury sort of what is involved in that and  
5 what are you doing with regard to that?

6 A So the meat I.D. test actually targets the  
7 mitochondrial DNA, which makes it a little bit better.  
8 Like I said, there's a thousand mitochondrial in a cell  
9 versus that one nuclear DNA. So there's a lot more  
10 there. It's also a circular piece of DNA. So it's a  
11 little bit more hardy. It sticks around. And we have  
12 regions of the mitochondria that are specific to each  
13 of those species that I listed.

14 And, if we -- we have pointers that actually  
15 will give us two different peaks. If we get two peaks  
16 that are both for pig, we have a pig result. If we get  
17 two peaks for dog, we have a dog result. Or the same  
18 can go for any of the species that we have. If we only  
19 get one peak, then we don't quantify that as being a  
20 positive result for that species.

21 Q And so you would need more than one peak in  
22 order to make that sort of opinion or qualification as  
23 far as species goes?

24 A Right. We always have to have the two peaks  
25 for the species that we are giving results for.

1           Q     And so with regard to the meat I.D. testing  
2     that you did with these swabs, these two swabs, what,  
3     if any, results did you receive or what, if anything,  
4     did you observe upon completion of the test?

5           A     So for both the swabs, we did see pig. And we  
6     also actually did -- I did a little bit of a test where  
7     we only concentrated on the dog portion of the meat  
8     I.D. You can think of it as when we have all 12  
9     species there, there's a lot of competition going on.  
10    By just concentrating on the dog meat I.D., it  
11    eliminates all the competition. It gives us a better  
12    chance of getting a result if there is canine DNA  
13    there. And that result was negative. So the only  
14    result we got for both those swabs was for the pig.

15          Q     And so again, just to be clear as far as the  
16    canine was concerned, there was not even one peak from  
17    what you observed?

18          A     There was absolutely no canine DNA.

19          Q     Now, as far as the pig is concerned, what, if  
20    anything, could that be from?

21          A     You know, I don't know where that could come  
22    from. That would be speculation on my part. It's a  
23    sensitive test, I can tell you. So yeah. It would  
24    depend on where that shirt had been and what the person  
25    had been doing with it.

1           Q     My question, I guess, is as far as the source,  
2     could that be from beyond just an animal? Could it be  
3     from some other source such as food or something like  
4     that?

5           A     Yes. It could be from food. We have tested  
6     the meat I.D. test. In fact, that's what it was  
7     developed for, was for testing food products. And so  
8     we've seen it come from cooked pork, cooked bacon in  
9     terms of pig. But those were tested specifically.

10           MR. LALLY: Your Honor, may I have just one  
11     moment, please?

12           THE COURT: Sure.

13     BY MR. LALLY:

14           Q     So Ms. Kun, just lastly, just to be crystal  
15     clear, from your texting in regard to both the qPCR and  
16     the meat I.D. testing, there was absolutely no canine  
17     DNA that you observed on the two samples that were  
18     submitted to you from the state police lab in  
19     Massachusetts?

20           A     That's correct. There was no canine DNA.

21           MR. LALLY: Thank you, ma'am. I have nothing  
22     further, Your Honor.

23           THE COURT: All right. Mr. Jackson?

24           MR. JACKSON: Thank you, Your Honor.

25                   CROSS-EXAMINATION

1 BY MR. JACKSON:

2 Q Good morning, Ms. Kun.

3 A Hi.

4 Q Just to finish that thought and to start off,  
5 there was no canine DNA detected in your testing,  
6 correct?

7 A Correct.

8 Q Okay. So when you say there was no canine  
9 DNA, that's a little bit of an overstatement, correct?

10 A There is no canine DNA in the swabs that we  
11 tested.

12 Q Exactly. Perfect. So the Massachusetts State  
13 Police did not send you any actual items of clothing or  
14 cuttings or source material, did they?

15 A No, they did not.

16 Q As a matter of fact, the only thing to be  
17 tested were the swabs that you received, those two  
18 swabs that we saw very nicely photographed?

19 A Yes.

20 Q You'd agree that your analysis of those swabs  
21 was only as good as the starting material with which  
22 you have to work, correct?

23 A That would be correct. I only have the swabs  
24 to test. That is the only thing I can talk about.

25 Q So the integrity of any DNA testing has to

1 start foundationally with the proper recovery  
2 techniques for what's being tested, what's going on the  
3 swab?

4 A I have no idea how the agency collected the  
5 swabs.

6 Q So you're left -- I guess the next question  
7 would be you're left to assume that proper techniques  
8 were used to swab the test material?

9 A Yes.

10 Q And for a forensic scientist, that assumption  
11 may not always be valid?

12 A Well, cases can vary for us. Sometimes we get  
13 the actual source material. Sometimes we get the  
14 swabs. It's dependent upon the agency sending it in.  
15 It depends on their policies and procedures, which I  
16 cannot dictate.

17 Q Right. Because if the swab is not collected  
18 properly or the source material is not swabbed  
19 properly, then you're left with sort of garbage-  
20 in/garbage-out analysis, right?

21 A But I wasn't there to see the swabs being  
22 collected. So I have no idea. I can't comment on  
23 that.

24 Q Exactly. So that answers my next question:  
25 You were not present when the swabs were taken,

1 correct?

2 A No.

3 Q You couldn't oversee the collection of those  
4 swabs?

5 A No.

6 Q You didn't take the swabs yourself?

7 A No.

8 Q And you never did receive any of the source  
9 material from which those swabs were taken?

10 A No. Only the two swabs.

11 Q You do understand very clearly from your  
12 testimony and the UC Davis, the University of  
13 California Davis lab and the impressive work that y'all  
14 do, you do understand proper protocols for evidence  
15 collection, correct?

16 A Right, when we do collection at our lab.

17 Q For one thing, you keep proper logs, correct?

18 A Correct.

19 Q As a matter of fact, in your report, there's a  
20 log, a couple of pages of logs, that literally detail  
21 down to the minute when somebody touched those swabs,  
22 correct?

23 A Correct.

24 Q That's because it's important to maintain  
25 those types of logs to avoid contamination on the one

1 hand, right?

2 A I don't know if keeping the logs maintained  
3 prevents contamination.

4 Q That is a fair correction. The logs would  
5 give you an idea of who touched something when. And,  
6 if there was some contamination, you might be able to  
7 work backward to figure out how that contamination  
8 occurred?

9 A Correct.

10 Q That's why the laws are in place, correct?

11 A It's to be able to see step by step where  
12 everything was going.

13 Q It maintains a very, very specific chain of  
14 custody?

15 A Correct.

16 Q So everybody that touches those swabs or that  
17 item that's going into an evidence locker or coming out  
18 of an evidence locker or being tested, that's highly,  
19 highly regulated, and it's marked on a log?

20 A It's documented in my case notes, and it's  
21 documented on our internal chain of custody.

22 Q So there's literally multiple documents that  
23 dictate -- I'm sorry -- that memorialize the movement  
24 of that evidence, right?

25 A As it goes through our lab, yes.



1 Q Right. And those criteria include the time  
2 that something was touched?

3 A Yes.

4 Q The place where it was touched?

5 A We don't document the place.

6 Q Meaning it was taken out of this particular  
7 locker and put on this particular --

8 A Yes.

9 Q The person that manipulated those items or  
10 that item --

11 A Yes.

12 Q You were asked about the processes that your  
13 lab undertakes to avoid or reduce contamination?

14 A Correct.

15 Q You were asked that by Mr. Lally on direct  
16 examination. Do you recall that?

17 A Yes.

18 Q You went through what your lab and the  
19 accreditation process -- the protocols that you employ  
20 to make sure that contamination is reduced hopefully to  
21 a minimum?

22 A Yes.

23 Q But you don't know what any other lab might  
24 employ in terms of their reduction of contamination  
25 processes?

1           A     No. I don't know those.

2           Q     And you specifically don't know what the  
3     Massachusetts Crime Lab did or didn't do with this  
4     subject material before you got the swabs?

5           A     Correct.

6           Q     You don't know if they took any steps, as a  
7     matter of fact, to reduce contamination of the source  
8     material before the swabs were taken?

9           A     I don't know anything about how they took  
10    those swabs.

11          Q     You would agree that, for instance, if the  
12    source material had been tossed on the bottom of an  
13    ambulance floor, that could encourage contamination of  
14    that source material?

15               MR. LALLY: Objection.

16               THE COURT: Can you answer that question?

17               THE WITNESS: I don't know because we haven't  
18    tested that sort of thing. It's an interesting  
19    question. I do agree. But we have not done any  
20    validation which would be able to prove that sort  
21    of thing.

22    BY MR. JACKSON:

23          Q     Well, I guess what I'm asking is if the item  
24    is supposed to be not contaminated --

25          A     Right.

1           Q     -- and is supposed to be relatively pristine  
2     and it drops on the floor, that might encourage  
3     contamination of that particular item that's supposed  
4     to be left as pristine as possible, correct?

5           A     Again, I don't know the history of the item.  
6     So I couldn't speak to this.

7           THE COURT: Mr. Jackson, I think you have to  
8     move on.

9     BY MR. JACKSON:

10          Q     If, in fact, the source material had been --  
11     was not packaged properly, could that encourage  
12     contamination?

13          A     But I didn't see how the items were packaged.

14          Q     I'm not asking that, Ms. Kun. I'm asking you  
15     hypothetically if an item, a source item, is going to  
16     be tested and is not packaged and handled properly,  
17     that could encourage contamination, correct?

18          A     I have not seen that. What I have seen when  
19     something has been packaged incorrectly is I have seen  
20     the induction of mold growth, which causes bacteria,  
21     which eats away at DNA. So it doesn't give me  
22     contamination, but it does mean that I don't see DNA.

23          Q     There might be -- if something is handled  
24     inappropriately, for instance, if something is handled  
25     sloppily before it's tested, it might reduce the

1 validity of the ultimate test that's undertaken,  
2 correct?

3 MR. LALLY: Objection.

4 THE COURT: I'm going to sustain that.

5 BY MR. JACKSON:

6 Q There are certain proper swabbing techniques  
7 involved in the preparation of a swab, correct?

8 A Yes.

9 Q That includes wearing gloves, using clean  
10 tools, correct?

11 A Correct.

12 Q It includes proper documentation of the  
13 swabbing?

14 A Correct.

15 Q The documentation might include the location  
16 or the description of exactly where the item was  
17 swabbed; is that right?

18 A Correct.

19 Q That would be helpful in your analysis to know  
20 exactly where something was swabbed?

21 A No.

22 Q What about any visible markings to show where  
23 swabbing was taken? Is that normally done?

24 A Again, it varies from lab to lab what we get.  
25 I, unfortunately, can't dictate what every other lab

1 does. They all have their own policies and procedures,  
2 and we work with labs across the United States and the  
3 world.

4 Q If you were swabbing something in your lab,  
5 which is an accredited lab, would you encourage marking  
6 exactly where something was swabbed so it can later be  
7 documented?

8 A When I swab things in my lab, I actually  
9 circle on the item. There is a note with the case  
10 number, my initials, the date and also a ruler present  
11 in the photo.

12 Q So if we have to go back, in your circumstance  
13 that you just described, if we have to go back and try  
14 to replicate exactly where that swab was taken, you  
15 could do that?

16 A Yes.

17 Q And you think that's obviously an important  
18 protocol?

19 A That's the protocol in our lab.

20 Q So the swabs that are used are sterile swabs,  
21 obviously?

22 A In fact, isn't it true that crime labs  
23 discourage, for purposes of DNA swabbing, discourage  
24 the use of swabs with wooden sticks because they can  
25 encourage contamination as opposed to plastic sticks?

1           A     I have not heard that.

2           Q     The swab is supposed to be moistened, right?

3           A     I do suggest that people moisten them with  
4 water in order to make a better transfer.

5           Q     And that needs to be distilled water, sterile  
6 water, correct?

7           A     Sterile water.

8           Q     And you swab over an area of interest. And  
9 then, generally, you would photograph the area that is  
10 being swabbed, correct?

11          A     I do.

12          Q     You would want to air dry that swab completely  
13 before --

14          A     Yes.

15          Q     -- you package it; is that right?

16          A     When I do my collection, I don't need to air  
17 dry my swabs because the next step is actually the  
18 extraction process. So I'm not doing collection and  
19 then pausing. I'm doing collection and starting my  
20 extraction.

21          Q     When you -- as a matter of fact, when you're  
22 collecting biomaterial, tissue samples, for instance,  
23 blood, other biomaterials, you would not want to  
24 package those in plastic because that would encourage  
25 some sort of mold growth?

1 A Mold and bacteria, yes.

2 Q So it's discouraged to put any blood, for  
3 instance, in plastic containers?

4 A Correct.

5 Q You certainly wouldn't put blood material that  
6 you're working with in nonsterile containers, would  
7 you?

8 MR. LALLY: Objection.

9 THE COURT: Sustained.

10 BY MR. JACKSON:

11 Q Would you put biological material in  
12 nonsterile containers?

13 MR. LALLY: Objection.

14 THE COURT: I'll allow that.

15 THE WITNESS: We don't have -- everything that  
16 we use is sterile. All of our tubes that we use  
17 are -- once we do a collection, we put it in the  
18 tube for the extraction process. Those tubes are  
19 autoclaved and they don't have contamination. They  
20 are sterile.

21 BY MR. JACKSON:

22 Q You wouldn't use a Solo cup?

23 A I'm sorry. What?

24 Q You wouldn't use a Solo cup?

25 MR. LALLY: Objection, Your Honor.

1 THE COURT: The objection is sustained.

2 BY MR. JACKSON:

3 Q You would maintain a strict chain of custody  
4 over that item to ensure the integrity and the  
5 admissibility of that DNA evidence?

6 A I did, yes.

7 Q And I think we've covered this. You may have  
8 answered this already, that your personal protocol is  
9 that you actually photograph where everything is being  
10 swabbed from, correct?

11 A Correct.

12 Q If there was DNA present on a source item and  
13 it wasn't sampled properly or swabbed properly in the  
14 right spot, then that DNA would likely not be detected,  
15 correct?

16 A I don't know why -- you know, I don't know the  
17 circumstances or why you would swab things, you know,  
18 in a specific spot. I know in my lab how we do things.

19 Q What I'm asking is if you have a source  
20 material and there is DNA over here and it's swabbed  
21 over here, you wouldn't expect this swab to detect that  
22 DNA, correct?

23 A That's correct.

24 MR. LALLY: Objection, Your Honor. Move to  
25 strike.



1 THE COURT: I'll allow it.

2 BY MR. JACKSON:

3 Q What information were you provided about these  
4 two particular samples?

5 A I wasn't really provided any information. I  
6 had to work with the person from the crime lab, asking  
7 about what they wanted to test and just try to narrow  
8 down the testing in terms of species simply because it  
9 helps us make sure that we are directing the testing in  
10 the correct way for the answer or for the question that  
11 they're answering.

12 So knowing the species in this case was  
13 important. It also made it so that we made it so that  
14 the testing was as affordable as possible.

15 Q Understood. Would it be important for you to  
16 understand the condition of the material that was being  
17 swabbed as you engaged your analysis, "the condition"  
18 meaning was it clean? Was it dirty? Did it have blood  
19 on it? Did it not have blood on it? Things of that  
20 nature.

21 A No, since we don't get to choose how evidence  
22 is given to us. Nice and clean with nice and clean DNA  
23 would be perfect, but that's not our perfect world we  
24 get samples from. So...

25 Q Hardly ever happens, does it?

1           A     No. It hardly ever happens.

2           Q     It would be important, however, to know  
3 whether or not there were obvious inhibitors on the  
4 source side of whatever's swabbed?

5           A     Knowing that there is dirt would be helpful or  
6 possibly blood because those can inhibit, but not  
7 necessarily -- we don't necessarily have to know that  
8 ahead of time.

9           Q     Were you told in this instance that the swabs  
10 were taken from a garment that had blood on it?

11          A     No.

12          Q     Okay. Is blood an inhibitor?

13          A     It can be, yes.

14          Q     Is garment dye an inhibitor?

15          A     Yes.

16          Q     Were you told that there was blood on a dyed  
17 garment when you received the swabs?

18          A     No.

19          Q     Your report indicates that the swabs that you  
20 did test, these two swabs, quote, "did not indicate the  
21 presence of canine nuclear DNA but did indicate the  
22 presence of inhibitors," end quote. Correct?

23          A     That was in our qPCR.

24          Q     Right. You explained that, quote, "this  
25 result is obtained when either, number one, the canine

1 nuclear DNA is degraded"; is that right?

2 A Correct.

3 Q Number two, it's, quote, "obscured by  
4 inhibition," end quote?

5 A Correct.

6 Q Or, number three, there is no canine nuclear  
7 DNA present, correct?

8 A Correct.

9 Q So in your report, you indicated that there  
10 are three reasons that you list for the possibility of  
11 not finding or not detecting the canine nuclear DNA in  
12 that sample?

13 A Correct.

14 Q All right. Two of those three reasons allow  
15 for the idea that the DNA is actually present but it's  
16 either obscured by inhibitors or it's so degraded that  
17 it can't be detected, correct?

18 A The nuclear DNA.

19 Q Right. But it still could exist?

20 A It could, yes.

21 Q It is just not -- you can't see it if it's  
22 obscured and you can't see it if it's degraded?

23 A Correct.

24 Q Explain how an inhibitor works in your  
25 testing.

1           A     An inhibitor just actually stops the PCR  
2 process from happening. And so, therefore, you would  
3 see no results.

4           Q     So did you find inhibitors in this sample?

5           A     In the nuclear DNA testing? Yes.

6           Q     And was that the qualitative polymerase chain  
7 reaction test, the qPCR test?

8           A     Yes.

9           Q     Okay. And, in fact, an inhibitor is pretty  
10 much any chemical that is literally going to inhibit  
11 the enzyme from helping make the copies?

12          A     Correct.

13          Q     Certain dyes inhibit?

14          A     Yes.

15          Q     And certainly blood inhibits?

16          A     From blood? Yes.

17          Q     And because of that, at least in that sample,  
18 the nuclear DNA sample, you're not saying that there  
19 was no canine DNA there. You're saying that the  
20 testing did not detect it?

21          A     In the qPCR nuclear test? Correct.

22          Q     And you've heard, obviously -- there's sort of  
23 a famous quote in science that the absence of evidence  
24 is not evidence of absence, right?

25          A     Correct.

1           Q     Can you describe for the jurors what that  
2 phrase means?

3           MR. LALLY:  Objection.

4           THE COURT:  Sustained.

5 BY MR. JACKSON:

6           Q     It means just because you don't find something  
7 means it's not there?

8           MR. LALLY:  Objection.

9           THE COURT:  Sustained.

10 BY MR. JACKSON:

11          Q     You were able to detect the presence of pig  
12 DNA, correct?

13          A     Correct.

14          Q     And I think you said on direct examination  
15 that that could come from a number of sources,  
16 including food sources, right?

17          A     Correct.

18          Q     It could come from dog treats?

19          A     Pardon me?  Yes.

20          Q     It could come from dog treats.

21          A     Uh-huh.

22          Q     As a matter of fact, there's dog treats that  
23 are pig ears, literally, right?

24          MR. LALLY:  Objection.

25          THE COURT:  I'll allow it

1 BY MR. JACKSON:

2 Q Is that right?

3 A I believe so.

4 Q Or it could be that the shirt that was the  
5 source material was contaminated and not properly  
6 preserved?

7 A I can't say where that DNA came from.

8 Q You're not aware of any feral pig populations  
9 in Massachusetts, are you?

10 A I'm not.

11 Q All right. Dog saliva would obviously be a  
12 good and a rich source of DNA, correct? You would  
13 agree?

14 A It depends on the context. We have cases  
15 where -- I mean, I can refer to two cases that we did  
16 recently where there were small bites, and we were able  
17 to get nuclear DNA from those sources.

18 Q Because there was probably saliva, right?

19 A Yes.

20 Q So saliva contains active, living, growing  
21 cells that slough off in the salivating process, right?

22 A Correct.

23 Q That's why oftentimes for 23andMe or other  
24 companies, they want you to swab the inside of your  
25 cheek --

1           A     Right.

2           Q     -- to get DNA, right?

3           A     Yes.

4           Q     So that's a relatively rich source of DNA, you  
5 would agree?

6           A     It depends on the amount of contact in the  
7 attack.

8           Q     However, dog claws, the claws, would not be a  
9 good source of DNA, would they?

10          A     No.

11          Q     And the reason for that is because the cause  
12 are, like human fingernails, they are made of keratin?

13          A     Correct.

14          Q     Keratin is dead, hardened cells and not a good  
15 source for DNA?

16          A     Not in terms of scratching. We can do  
17 something where we pulverize them, and we can get DNA  
18 from them then.

19          Q     But you have to have the claw?

20          A     Hum?

21          Q     You have to --

22          A     Generally, yes. You have to have the claw  
23 material.

24          Q     I spoke over you a little bit, but I want to  
25 make sure we are clear about that. You're talking

1 about you can possibly get DNA in a mitochondrial test  
2 if you have the claw and pulverize the claw?

3 A Correct.

4 Q It's possible to find some DNA. But, in terms  
5 of touch DNA, it's very difficult to find it from a  
6 claw because that --

7 A I really can't speak about touch DNA because  
8 it is not something we tested or validated in our lab.

9 Q So you didn't have any claws that you tested  
10 here?

11 A No.

12 Q As a matter of fact, you were just testing  
13 swabs from a shirt?

14 A Correct.

15 Q And you've already agreed that keratin is not  
16 a good DNA source because it's dead cells, not live  
17 cells?

18 A Correct.

19 Q Would you agree that one of the reasons that  
20 it's difficult to detect canine DNA, it was difficult  
21 to detect canine DNA in this case is because it was  
22 potentially degraded, right?

23 MR. LALLY: Objection.

24 THE COURT: Ask the question differently.

25 MR. JACKSON: Sure.



1 BY MR. JACKSON:

2 Q In your report, you indicated that there were  
3 two obvious possibilities of not detecting the DNA. On  
4 was obscuring because of inhibitors and one was  
5 degradation, the DNA would be too degraded?

6 A Again, that was for the nuclear canine DNA.

7 Q Understood.

8 So to be clear, in your conclusion, you're not  
9 saying, you're not testifying today, that there was no  
10 dog DNA on that source shirt that was swabbed. You're  
11 saying that the two swabs that you got did not detect  
12 the DNA, correct?

13 A In our meat I.D. test, we also have a test for  
14 an inhibitor. It's also called an IPC. It's the same  
15 initials. Internal positive control. And that's what  
16 did not work in the nuclear testing. It did work and  
17 worked very well in the test on the meat I.D.

18 So there wasn't any inhibition that we were  
19 seeing on the meat I.D. test.

20 Q But that's the I.D. test that you found pig?

21 A Right. But it also was testing for dog at the  
22 same time.

23 Q But, when you tested for dog for nuclear DNA,  
24 that test was either inhibited or so degraded that you  
25 couldn't tell?

1           A     For the nuclear test? Yes.

2           MR. JACKSON: Thanks. That's all I have.

3           THE COURT: Okay. Mr. Lally?

4                     REDIRECT EXAMINATION

5       BY MR. LALLY:

6           Q     Ms. Kun, on that last point, when it pertains  
7     to the nuclear DNA testing, it was either inhibited,  
8     degraded or it wasn't there; is that correct?

9           A     Correct.

10          Q     Now, as far as samples in your line of work,  
11     are you typically going like outside of the lab or  
12     going out to like a scene or anything and collecting  
13     samples in that regard?

14          A     No. Everything is sent to us.

15          Q     So when you're collecting from a sample, it's  
16     done in the lab setting; is that correct?

17          A     If we get the item, we are collecting it. But  
18     we have times in this case where the samples are  
19     sampled at the other crime lab and then we just get  
20     those samples. So it happens both ways.

21          Q     Now, if you recall, what, if any, conversation  
22     did you have with Ms. Hartnett or anybody from the  
23     Massachusetts state lab in regard to the swabbing or  
24     the collection process?

25          MR. JACKSON: Objection.

1 THE COURT: No. I'm going to allow it.

2 THE WITNESS: I gave her our basic swabbing  
3 practice. Even though they are a crime lab, I  
4 would assume that they would know what they were  
5 doing, which would be to swab with a sterile swab,  
6 using sterile water, allowing the swab to dry  
7 completely and then packaging with paper and  
8 storing at room temperature before sending it to  
9 us.

10 BY MR. LALLY:

11 Q And, when you received it in those seven  
12 photographs before you, was the packaging that you  
13 received, was that appropriate? Was that what you  
14 expected?

15 A Yes. It was what I expected.

16 Q Now, you described on direct as far as the  
17 mitochondrial DNA testing and the meat DNA as being  
18 heartier DNA; is that correct?

19 A So yes. The mitochondrial DNA is a heartier  
20 DNA. There is a lot more of it. When we are testing  
21 for nuclear DNA, like I explained before, there is only  
22 one copy of DNA in a cell, which, for the mitochondrial  
23 cell, there's thousands.

24 So you can have a lot more there. It makes  
25 for a better test, at least in terms of species. It is

1 just a more sensitive test.

2 Q And there were no inhibitors or anything like  
3 that in the mitochondrial and meat I.D. testing that  
4 you did?

5 A No. The IPC worked very well.

6 MR. LALLY: Thank you, ma'am. Your Honor, may  
7 I approach just to retrieve these?

8 THE COURT: Yes. Did you have anything  
9 further, Mr. Jackson?

10 MR. JACKSON: Very briefly.

11 RE CROSS-EXAMINATION

12 BY MR. JACKSON:

13 Q You indicated that you gave Ms. Maureen  
14 Hartnett certain protocols to follow in terms of her  
15 swabbing and recovery; is that right?

16 A Yes.

17 Q Are you aware that Ms. Hartnett had also  
18 failed certain of her proficiency exams --

19 MR. LALLY: Objection, Your Honor.

20 BY MR. JACKSON:

21 Q -- a couple of months earlier?

22 THE COURT: I am going to strike that. The  
23 objection is sustained.

24 MR. LALLY: Thank you.

25 MR. JACKSON: Nothing further.

1 THE COURT: All right. You are all set. You  
2 are excused.

3 THE WITNESS: Thank you.  
4 (Whereupon, the witness is excused.)

5 THE COURT: Could I see counsel just briefly,  
6 please?

7 (Whereupon, there was a sidebar conference as  
8 follows:)

9 MS. LITTLE: Just very briefly, if you don't  
10 mind. I just didn't want to run out of the  
11 courtroom.

12 THE COURT: No. You can run out of the  
13 courtroom at any time.

14 MS. LITTLE: Okay.

15 THE COURT: But did you want to take the  
16 morning recess or is this something that might take  
17 more than a few minutes?

18 MS. LITTLE: No. It will just take a minute,  
19 as long as I'm allowed to leave you guys.

20 THE COURT: Okay.

21 MS. LITTLE: Thank you.

22 THE COURT: That was it.

23 MR. JACKSON: Okay. Got it.

24 (Whereupon, the sidebar conference concluded.)

25 THE COURT: All right, Mr. Lally. Your next

1 witness?

2 MR. LALLY: Yes, Your Honor. The Commonwealth  
3 calls Mr. Ryan Nagel to the stand.

4 THE COURT: Mr. Jackson and Mr. Yannetti, are  
5 you prepared to go forward with Ms. Little's  
6 absence with Mr. Nagel?

7 MR. JACKSON: Yes, Your Honor.

8 THE COURT: Okay.

9 Whereupon,

10 RYAN NAGEL

11 having been first duly sworn, was examined and  
12 testified under oath as follows:

13 THE COURT: Okay. Whenever you are ready,  
14 Mr. Lally.

15 MR. LALLY: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. LALLY:

18 Q Good morning, sir.

19 A Good morning.

20 Q Could you please state your name and spell  
21 your last name for the jury, please?

22 A Ryan Nagel, N-A-G-E-L.

23 Q And, Mr. Nagel, where do you live?

24 A I live in Canton.

25 Q And how long have you lived in Canton?

1 A Thirty years.

2 Q And who, if anyone, do you live in Canton  
3 with?

4 A I live with my girlfriend now and her son.

5 Q Prior to that, who, if anyone, did you live  
6 with.

7 A My parents and my brother and sister.

8 Q And you have two siblings, a brother and a  
9 sister?

10 A Correct.

11 Q And are you the oldest?

12 A Yes.

13 Q And your sister's name is what?

14 A Julie.

15 Q Now -- and do you work, sir?

16 A Yes, I do.

17 Q And what do you do for work?

18 A I'm a union tin knocker, which is HVAC.

19 Q And how long have you been doing that?

20 A About 12 years.

21 Q Now, sir, if I could turn your attention to  
22 January 28th into January 29th of 2022. Do you recall  
23 that?

24 A I do.

25 Q Do you recall what days of the week they were?

1           A     I believe it was a weekend.

2           Q     At some point, do you recall going out on that  
3 evening?

4           A     Yes, I do.

5           Q     And where did you go and who, if anyone, did  
6 you go out with?

7           A     I went to C.F. McCarthy's to begin the night  
8 with two of my -- well, now my ex-girlfriend and my  
9 friend, Rick, to meet up with my sister.

10          Q     And so your girlfriend at the time, what was  
11 her name?

12          A     Heather Maxon.

13          Q     And your friend, Ricky, what is his last name?

14          A     D'Antuono.

15          Q     And you and your girlfriend at the time,  
16 Ms. Maxon, how long had the two of you been dating at  
17 that point?

18          A     Probably about a year, year and a half.

19          Q     And your friend, Ricky, how long have the two  
20 of you been friends?

21          A     Oh, probably since sixth grade. So a pretty  
22 long time.

23          Q     And you went to C.F. McCarthy's. Is that an  
24 establishment you're familiar with?

25          A     Yes, sir. It's in the center of town.



1 Q Been there plenty of times before?

2 A Yes, sir.

3 Q And did you go just sort of the three of you  
4 or did you meet someone else there?

5 A I met my sister there.

6 Q And where within the bar did you go?

7 A I believe at a table, to my acknowledgment or  
8 what I remember, yeah.

9 Q Do you recall what side of the bar you were on  
10 or where you were?

11 A I believe I was on the left side, near the  
12 bathrooms.

13 Q So if you're walking in, on the left side  
14 toward the bathrooms?

15 A Correct.

16 Q And do you recall about what time it was that  
17 you got there?

18 A Probably -- I don't even really remember.  
19 Seven, eight, maybe.

20 Q And do you recall how it was that you got  
21 there? Like what mode of transport did you take?

22 A Oh, Ricky drove.

23 Q And Ricky drove his own vehicle; is that  
24 correct?

25 A Correct, sir.

1 Q And what kind of vehicle did Ricky have?

2 A I believe it was a 2018 F-150.

3 Q Do you recall the color or anything like that?

4 A Gray. Dark gray.

5 Q And he picked you, is that correct?

6 A Correct, sir.

7 Q And was Ms. Maxon with you when he picked you  
8 up?

9 A Yes, sir.

10 Q Now, as far as C.F. McCarthy's was concerned,  
11 you were at a bar and you were drinking; is that  
12 correct?

13 A Correct, sir.

14 Q Do you recall what you were drinking?

15 A Probably beer. That's usually what I drink.

16 Q Okay. And do you have a particular brand or  
17 anything?

18 A Coors Light.

19 Q And, as far as your girlfriend at the time,  
20 Ms. Maxon, do you recall what, if anything, she was  
21 drinking?

22 A I'll probably say beer, as well. Probably Bud  
23 Light or Mic Ultra.

24 Q And your friend, Ricky. Was he drinking, as  
25 well?

1 A Yeah. He had a few.

2 Q If you know, about how long were you at  
3 C.F. McCarthy's?

4 A Probably a few hours. Probably two, maybe  
5 three hours.

6 Q Now, following that, where did you go?

7 A From there, we went to -- so a friend of mine  
8 shot me a text, and we went to the Hillside, which is  
9 on the other side of town.

10 Q And you're familiar with that establishment,  
11 as well?

12 A Yes, sir.

13 Q When you say it's on the other side of town,  
14 about how long is the drive sort of between C.F.  
15 McCarthy's and the Hillside?

16 A Probably 10 minutes.

17 Q And, when you arrived there, how many friends  
18 are we talking about that you're meeting up with there?

19 A Just one other gentleman.

20 Q And fair to say when you get there, you have  
21 some more drinks?

22 A Yes, sir.

23 Q Same thing?

24 A Yes.

25 Q And, if you know, in total sort of through the

1 course of the evening as you're going from one place to  
2 the other, how many beers did you have?

3 A Probably between five to eight, maybe, give or  
4 take. I'm not sure.

5 Q And is that a large amount or a normal amount?  
6 How would you characterize that?

7 A I guess for the weekend, it would probably be  
8 like normal, I guess.

9 Q And you weren't driving that night, correct?

10 A No, sir. No, I was not.

11 Q And about how long was it that you were at the  
12 Hillside?

13 A I would say I was probably there an hour-ish,  
14 give or take.

15 Q And do you know about what time you left?

16 A Probably around midnight.

17 Q And, when you left from there, where was it  
18 that you went?

19 A I went to pick up my sister, Julie, because  
20 she shot me a text, asking for a ride.

21 Q And so you were at the Hillside when you  
22 received a text from your sister, Julie, correct?

23 A Correct, sir.

24 Q And did she -- what, if anything, did she  
25 indicate as far as where she was or where you were

1 going to pick her up?

2 A She said she was at her friend, Brian's house.

3 Q And that friend, Brian, is that someone that  
4 you're familiar with?

5 A Yes, sir.

6 Q Okay. And who do you know that person to be?

7 A Just my sister's best friend since they were  
8 kids.

9 Q And I'm sorry. Do you know what his last name  
10 is?

11 A Oh. Albert.

12 Q And his house, had you been there before?

13 A I've driven by it a few times, yes.

14 Q Is that somewhere you had picked your sister  
15 up from on prior occasions?

16 A Yes, sir.

17 Q Again, as far as when you leave from the  
18 Hillside and you're going to this address, did you know  
19 what the address was or did you have to ask your sister  
20 for it?

21 A No. I already knew where the house was.

22 Q Did you know specifically what the address was  
23 or you just knew generally where it was?

24 A I didn't know the address. I knew the street  
25 name but I didn't know the number.

1 Q And what did you know the street name to be?

2 A Fairview.

3 Q And, as you're -- so you exit the Hillside,  
4 get in the truck. Who is in the truck at this point?

5 A Ricky is driving. I'm in the passenger seat,  
6 and Heather is in the back seat.

7 Q And the back seat, as far as Ricky's truck is  
8 concerned, can you describe sort of what that is?

9 A It was like a jump seat. It's a crew cab. So  
10 it's got like suicide doors on the back.

11 Q And by "suicide doors," you mean they sort of  
12 open up in sort of like a triangle? Is that --

13 A Yes, sir.

14 Q Now, about how long was it after you received  
15 the text from your sister to the time that you sort of  
16 jump in the truck and start to go over to Fairview?

17 A Like 40 minutes or so. We sort of took our  
18 time. She said she didn't -- like she wasn't saying,  
19 come now. She just said, you know, when you get a  
20 second, can you come pick me up and bring me home.

21 Q And, if you know, about how long a drive is it  
22 from the Hillside to Fairview?

23 A Five minutes. Seven minutes, maybe.

24 Q And, as you're driving along as far as the  
25 address is concerned, is that something that you gave

1 to Ricky as far as a GPS, or were you giving him sort  
2 of verbal directions?

3 A Verbal directions.

4 Q And do you recall what you sort of said as far  
5 as where to go?

6 A Yes, sir.

7 Q And what was that, sir?

8 A Like the direction we went, you mean? Like  
9 the street?

10 THE COURT: I think we can move beyond that,  
11 Mr. Lally.

12 BY MR. LALLY:

13 Q What I'm trying to ask, sir, is as you're  
14 approaching Fairview, do you recall which side of  
15 Fairview or how you approached Fairview?

16 A I was coming down Cedarcrest. So Fairview  
17 would be on my left.

18 Q And, as you're coming down Cedarcrest with  
19 Fairview on your left, what, if anything else, did you  
20 observe sort of in front of the truck?

21 A I noticed a car coming up the hill towards us.

22 Q And can you describe the other car that you  
23 saw coming up the hill?

24 A It was a black SUV.

25 Q And was that a black SUV that you were

1 familiar with or anything like that or --

2 A No. I really --

3 THE COURT REPORTER: I didn't get the end of  
4 the question, please?

5 THE WITNESS: I'm sorry.

6 BY MR. LALLY:

7 Q Sir, if you could -- and I know it's  
8 difficult. But if you could just wait until I finish  
9 the --

10 A Yup. Sorry, sir.

11 Q -- question just so the stenographer can  
12 record it.

13 I'm sorry. So as you were coming up and you  
14 see this black SUV, did you recognize it as something  
15 you had seen before?

16 A No, sir.

17 Q And, when it's -- so you're approaching at the  
18 same time; is that correct?

19 A Yeah. Just about, yes.

20 Q And, with regard to Fairview being on the  
21 left, what, if anything, had Ricky done with respect to  
22 the vehicle to signal the left turn?

23 A He put his left blinker on.

24 Q And that other vehicle that was coming in the  
25 opposite direction, what, if anything, did you observe



1 as far as their directional?

2 A They had their right directional on.

3 Q And so as a result of that, what, if anything,  
4 did Ricky do?

5 A He flashed his headlights to let the person go  
6 because they were going to beat us, obviously, to the  
7 turn. So...

8 Q And, when they were coming in, so they went  
9 first; is that correct?

10 A Yes, sir.

11 Q And Ricky's truck then proceeds behind that  
12 black SUV onto Fairview?

13 A Yes, sir.

14 Q And, as you're coming up to the house, to  
15 Brian Albert, Jr.'s house, where did that black SUV go?

16 A Probably about kind of right in front of the  
17 house, I could say.

18 Q So it came up to the same house that you were  
19 going to; is that correct?

20 A Correct, sir. Yes.

21 Q And, as far as the vehicles, being the black  
22 SUV and Ricky's truck, are they facing in the same  
23 direction?

24 A Yes, sir.

25 Q And which side of the truck that you're in is

1 facing towards the house, Brian's house?

2 A Say that again? I'm sorry.

3 Q Sure. It's a very poorly put question.

4 So with regard to the truck that you're in --

5 A Yes.

6 Q -- is it the driver's side, the passenger side  
7 or something else that's facing the house?

8 A Passenger side. So my side.

9 Q So your side and the passenger side, facing  
10 the house?

11 A Yes, sir.

12 Q And where did Ricky stop the truck in relation  
13 to the house?

14 A Right in front of the driveway.

15 Q And, when you stop in front of the driveway,  
16 about how far away from you is the black SUV that you  
17 saw?

18 A About a car or a car length in front of me. A  
19 car length and a half in front of me.

20 Q And, as you're sitting behind that, what, if  
21 anything, was in between the truck, Ricky's truck, and  
22 the black SUV in front of you?

23 A There was nothing, sir.

24 Q And, at any point in time that you were there  
25 in front of the house, did you observe anybody get out

1 of that truck? I mean get out of the SUV. I'm sorry.

2 A No, sir. I did not.

3 Q And, when you arrived there, what, if any,  
4 communication do you have with Julie inside the house  
5 in reference to your presence?

6 A I texted her when we were coming down from  
7 Cedarcrest, saying, hey, I'm almost here, you know, get  
8 ready to come out.

9 Q And about how long was it between the time  
10 that Ricky parks in front of the driveway and the time  
11 that your sister comes out?

12 A Probably about two minutes.

13 Q And do you recall seeing her exit from the  
14 house?

15 A Yes, I do.

16 Q And how did she sort of exit and how did she  
17 come up to the truck?

18 A You mean like what door?

19 Q What door and how did she sort of traverse --

20 A I'd say the side door next to the garage.

21 Q And how was it that she -- did she come across  
22 the lawn, down the driveway? How did she come up to  
23 it?

24 A I guess she crossed the lawn a little bit but  
25 obviously walked down the driveway because we were at

1 the end of it.

2 Q At this time when you're in front of the house  
3 on Fairview, what was the weather doing at that point?

4 A It just started to snow, sir.

5 Q And, as far as accumulation on the road or the  
6 grass or anything, could you see anything like that?

7 A Very little. There wasn't too much on the  
8 ground yet.

9 Q And, as far as when your sister was walking  
10 down from the house to the truck, could you see  
11 anything as far as, like footprints in the snow or  
12 anything like that at that point?

13 A No. I was not really looking for that.

14 Q So not anything that you noticed?

15 A No. No, sir.

16 Q So she comes to the truck. How is it that you  
17 spoke to her? Did you roll down the window, open the  
18 door? How did that work?

19 A I opened the door just because I assumed she  
20 was going to jump in the back seat. And she goes, oh,  
21 would you guys like to come inside? I looked over at  
22 Ricky. And he goes, eh, maybe we should call it a  
23 night, because obviously we were out for a long time.  
24 So she goes, I'm going to stay a little longer. So she  
25 shut the door. And I watched her go in the house, and

1       that was it.

2           Q     And from the time that your sister came out  
3     and the time that she went back in the house, about how  
4     long a period of time was that?

5           A     Maybe 30, 45 seconds, tops.

6           Q     So a relatively short amount of time?

7           A     Yeah. It was kind of like an in-and-out  
8     thing.

9           Q     Now, as far as the black SUV in front of you,  
10    what, if anything, did you observe about movement of  
11    that vehicle at any point?

12          A     I noticed that the brake lights -- the only  
13    reason that I noticed is because the brake lights were  
14    on, and I'd say it moved up maybe another car length in  
15    front of us from where it was.

16          Q     And when was that in relation to when you were  
17    parked out there, waiting for Julie and talking to  
18    Julie? When did that occur?

19          A     Probably simultaneously when she came out the  
20    door.

21          Q     So it moved up a little bit further, about a  
22    car, car and a half?

23          A     Further away from us.

24          Q     Facing in the same direction?

25          A     Yes, sir.

1           Q     And was that the only time you observed the  
2 vehicle move up or did it move up again?

3           A     No. That was the only time I saw it move.

4           Q     And, when you say "the brake lights," what  
5 part of the brake lights were you looking at?

6           A     The only reason I noticed it was the brake  
7 lights and not the regular parking lights is because  
8 the third light above was on.

9           Q     And so above, sort of in the center of the  
10 back of the vehicle?

11          A     Correct, sir. Yes.

12          Q     Now, as far as any of the other lights or any  
13 other part of the vehicle, what, if any, damage did you  
14 observe on the vehicle at that time?

15          A     I did not observe. It was dark out.

16          Q     And, as far as when the vehicle moved up from  
17 one position to the next position, what, if anything,  
18 did you observe in the roadway as far as tire marks in  
19 the snow or anything like that?

20          A     I didn't really observe any other tracks in  
21 the snow besides the car in front of us.

22          Q     Okay. So you did observe tire marks from the  
23 car in front of you?

24          A     Yes.

25          Q     Okay. But no other tire marks that you saw?

1           A     No, sir.

2           Q     Okay. And, as far as around the vehicle, at  
3 any point in time, did you observe anybody exit the  
4 vehicle or be outside of the vehicle or anything like  
5 that?

6           A     No, sir. No, I did not.

7           Q     And did you see anybody go from the vehicle to  
8 the house?

9           A     No, sir.

10          Q     And did you see any footprints in the snow or  
11 anything like that around the vehicle?

12          A     No, mainly because, obviously, it was late at  
13 night and I wasn't really looking for any of that.

14          Q     Now, as far as your sister when she comes out  
15 to the truck outside, how would you describe -- did she  
16 seem overly intoxicated to you?

17          A     It seemed like she had a few.

18          Q     Was she slurring her words or stumbling as she  
19 was walking?

20          A     No, sir.

21          Q     Let me ask, from the time that you came down  
22 -- you came down from Cedarcrest; is that right?

23          A     Correct, sir. Yes.

24          Q     So from the time that you came down from  
25 Cedarcrest, the black SUV is in front of your vehicle

1 sort of the entire time, correct?

2 A From like the point I turned onto Cedarcrest,  
3 you mean?

4 Q Yes.

5 A No. The only time I saw the vehicle was when  
6 we probably got 100 feet from Fairview.

7 Q And I'm sorry. It's a poorly put question.  
8 What I'm asking is after you turn from Cedarcrest onto  
9 Fairview, that vehicle is in front of you the entire  
10 time you're there?

11 A Yes, sir. Yes.

12 Q So you watch your sister, Julie, go back up to  
13 the house; is that correct?

14 A Yes, sir. I did.

15 Q Basically to make sure she got inside okay?

16 A Yes, sir.

17 Q And did you observe her go inside the house?

18 A I did. Yes, sir.

19 Q And, after she gets inside the house, what, if  
20 anything, did Ricky do with the truck?

21 A He pulled out to go around the SUV in front of  
22 us and then to go home.

23 Q And, as far as pulling out, as far as sort of  
24 the distance between the truck that you're in and the  
25 SUV that is in front of you, did Ricky put it in



1 reverse and then have to like maneuver around, or could  
2 he just sort of pull away from the curb?

3 A He just pulled away.

4 Q And, as he is going by the dark SUV, what, if  
5 anything, did you observe with reference to that?

6 A I observed that there was a person inside the  
7 car with an interior light on.

8 Q And that would be sort of a dome light; is  
9 that right?

10 A Correct, sir. Yes.

11 Q Could you see where the dome light was as far  
12 as in the left, right or center of the vehicle?

13 A It was in the center.

14 Q And can you describe the person that you saw?  
15 First of all, where were they in the car?

16 A They're in the driver's seat.

17 Q And can you describe what the person looked  
18 like?

19 A It was a woman.

20 Q And how do you know that it was a woman?

21 A Had long hair.

22 Q Do you know what color the hair was?

23 A No, I do not. I wasn't really paying  
24 attention to it. I was kind of just watching Julie go  
25 in as we were pulling away.

1           Q     So your direction was to the house as you were  
2 watching Julie go in and Ricky is pulling away sort of  
3 simultaneously?

4           A     Yes, sir.

5           Q     So that's why you're looking over in that area  
6 of the house?

7           A     Correct.

8           Q     And the woman that you see in the driver's  
9 seat of the vehicle, could you see her lips moving as  
10 if she was talking or anything like that?

11          A     No. I wasn't really paying attention to that.

12          Q     And, as far as what, if anything, did you  
13 observe her to be doing or how was she seated?

14          A     It seemed like she was looking straight ahead  
15 with her hands at 10 and two on the steering wheel.

16          Q     Now, as far as the other -- what, if anything  
17 else, did you see or who, if anyone else, did you see  
18 within the interior of the vehicle at that time?

19          A     I only saw one person at the time. I didn't  
20 -- I wasn't really looking. It just happened to be  
21 like at a glance as we drove by.

22          Q     And so your head is already turned in that  
23 direction, looking to see your sister get inside the  
24 house, correct?

25          A     Correct, sir. Yes, sir.

1           Q     And so as you're going by and you make these  
2 observations of this woman in the front seat of the  
3 vehicle, what, if any, movement did you do of your body  
4 or your head to look into the vehicle?

5           A     I just turned my head as we were driving by to  
6 watch Julie go in. And I then turn straight and look  
7 forward.

8           Q     So it's not as if you were peeking forward or  
9 going back to get a better view inside the vehicle?

10          A     No, sir.

11          Q     Now, during the time that you were outside of  
12 the house, did you hear any noises or hear anything  
13 coming from that vehicle in front of you?

14          A     No, sir. I did not.

15          Q     And, as far as within your own vehicle, when  
16 Julie comes out, what, if anything, did you or Ricky do  
17 with regard to sort of the radio within it?

18          A     Turned the music down. We had music playing.

19          Q     So you had music playing as you pull up and  
20 turn it down when Julie comes out to talk?

21          A     Correct. Yes, sir.

22          Q     And, at the time that you're pulling away from  
23 the curb, had you or anybody sort of, you know, turned  
24 the radio back up?

25          A     Not that I remember, sir, no.

1           Q     Now, with reference to when Julie comes out,  
2     then you open the door so that you can talk to her; is  
3     that correct?

4           A     Yes, sir. Yes.

5           Q     And did you open just the front passenger door  
6     or the back door or both?

7           A     I opened my passenger door. That was it.

8           Q     And you were expecting her to essentially get  
9     in at that point; is that correct?

10          A     Correct, sir. Yes, I was.

11          Q     Now, when you opened the door to the pickup  
12     truck, the passenger side door, what, if anything,  
13     happened with the dome light inside the truck?

14          A     It went on.

15          Q     Now, after you go past the dark SUV, where did  
16     you go from there?

17          A     To my house, sir.

18          Q     And, as far as your house, who, if anyone,  
19     gets dropped off there in addition to yourself?

20          A     Just me and Heather.

21          Q     And Ricky then leaves from there; is that  
22     correct?

23          A     Yes, sir.

24          Q     And, from that road on Fairview to your house,  
25     about how long a ride is that?

1           A     Five minutes.

2           Q     And, when you left the roadway on Fairview,  
3     the vehicle that you had seen after initially pulls up  
4     an additional car, car and a half or so, when you left,  
5     was it in the same position after its movement that you  
6     observed?

7           A     Yes.

8                     MR. LALLY: Your Honor, with the Court's  
9     permission, I would just ask to publish a couple of  
10    photos for use with this witness.

11                    THE COURT: Okay.

12                    MR. LALLY: Ms. Gilman, if I could have  
13    Exhibit No. 71.

14                    And I'm sorry, Your Honor. May I approach the  
15    witness just briefly?

16                    THE COURT: Yes.

17    BY MR. LALLY:

18           Q     Sir, right before you on the table here is a  
19    laser pointer. Just basically click that button and  
20    point it if and when I ask or anybody asks you, sir.

21                    So, Mr. Nagel, up on the screen, do you  
22    recognize what is depicted in that photograph up on the  
23    screen?

24           A     Yes, I do, sir

25           Q     And what do you recognize it to be?

1           A     Say that again?

2           Q     What do you recognize it to be?

3           A     That is the Alberts' house.

4           Q     Okay. And is that a fair and accurate  
5 portrayal of what the house looked like on the night  
6 that you were there on the early morning of the 29th?

7           A     It looks like there was more snow than when I  
8 came through.

9           Q     So more snow in this photograph than when you  
10 were there, correct?

11          A     Yes, sir.

12          Q     Now, with reference to Ricky and the truck, if  
13 you could, using that laser pointer, do you see that  
14 area of the street in front of the house where Ricky  
15 parked the truck?

16          A     I do, sir. Right about there (indicating).

17               MR. LALLY: And, Ms. Gilman, if I could have  
18 the next, Exhibit No. 72.

19          Q     Now, the area that you were describing when  
20 you first pull up to the house and the dark SUV is in  
21 front of you, do you see that area within this  
22 photograph?

23          A     Yes, I do, sir.

24          Q     And if you could, using the laser pointer,  
25 direct the jury's attention to where in this photograph

1       you see that?

2           A     (Witness complies.)

3           MR. LALLY:  And, Ms. Gilman, if I could have  
4           the next photograph, the next exhibit, excuse me,  
5           No. 73.

6           Q     Again, what's up on the screen, do you  
7           recognize what's in that photograph?

8           A     Yes, I do, sir.

9           Q     And within this photograph do you see that  
10          sort of secondary position where the vehicle moves up  
11          and where you see it in that secondary position?

12          A     Yes.

13          Q     And, again, if you could, using the laser  
14          pointer, direct the jury's attention to where in the  
15          photograph you observed that?

16          A     (Witness complies.)

17          Q     Thank you, sir.  And from that side of the  
18          yard, is there any sort of landmarks or anything else  
19          that you observe as sort of in the area of where that  
20          vehicle pulled up to in that secondary position?

21          A     I know there is flagpole there and I believe  
22          it's an electrical box along with bushes.

23          Q     And the flagpole?  You observed that in this  
24          picture, as well?

25          A     Yes, sir.

1 Q And, if you could, just briefly direct the  
2 jury's attention to that, as well.

3 A (Witness complies.)

4 Q Thanks.

5 MR. LALLY: Thank you, Ms. Gilman. You can  
6 take that down.

7 If I may just have a moment, Your Honor?

8 THE COURT: Yes.

9 MR. LALLY: No further questions for this  
10 witness, Judge.

11 THE COURT: Okay. Mr. Jackson?

12 MR. JACKSON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. JACKSON:

15 Q Good morning, Mr. Nagel.

16 A Good morning.

17 Q A couple of questions for you. Since January  
18 29th, have you been contacted by anybody from either  
19 the Albert family or the McCabe family about the  
20 circumstances of January 29th, 2022?

21 A No, I have not, sir.

22 Q Have you been contacted by any other person  
23 other than the Albert family or the McCabe family since  
24 January 29th, 2022 about your testimony or your  
25 statements?



1           A     About my statements, no. But, I mean, me and  
2 Ricky are best friends. And, obviously, its things  
3 brought up --

4           Q     Fair enough. I didn't mean to speak over you.  
5 So you and Ricky -- how do I pronounce his last name?

6           A     D'Antuono.

7           Q     D'Antuono. You and Mr. D'Antuono have  
8 obviously discussed the circumstances of that night?

9           A     Yes, sir.

10          Q     And what happened? Did that change your  
11 testimony in any way?

12          A     No, sir. No, it did not.

13          Q     You were interviewed by a Massachusetts State  
14 Trooper on or about February 7th, 2022, correct?

15          A     That sounds about right. Yes.

16          Q     Do you remember which state trooper that was?

17          A     Not off the top of my head, no.

18          Q     Does the name Michael Proctor sound right?

19          A     No, sir. I don't think so.

20          Q     You don't believe it was Michael Proctor?

21          A     I'm not 100 percent sure. No, I'm not sure.

22          Q     Do you remember the state trooper that did  
23 interview you had a partner named Yuri Bukhenik?

24          A     Yes.

25          Q     Does that name sound familiar?

1           A     That sounds familiar, yes.

2           Q     During that interview, you told the -- and I'm  
3 just going to call him the trooper since you don't  
4 remember his name -- the trooper and Yuri Bukhenik that  
5 there were two other people in the car when you  
6 approached 34 Fairview?

7           A     Say that again?

8           Q     You told those two troopers that there  
9 were two other people in the car with you,  
10 Ricky D'Antuono and Heather Maxon?

11          A     Yes. In my vehicle, yes, sir.

12          Q     Okay. So they were well aware of the identity  
13 of Ricky D'Antuono and Heather Maxon --

14          A     D'Antuono.

15          Q     -- D'Antuono and Heather Maxon at the time?

16          A     Correct.

17          Q     As early as February 7th, 2022?

18          A     Yes.

19          Q     I want to talk for a second about your  
20 approach to Fairview Road. You were coming along  
21 Cedarcrest, correct?

22          A     Correct.

23          Q     You would have been going west-ish -- I know  
24 it's a curved road, but sort of west. If Fairview goes  
25 north and south --

1 A Yes, sir. Okay.

2 Q -- you would have been going west and then  
3 turning south onto Fairview, correct?

4 A Correct. Yes.

5 Q You indicated that the SUV, the dark SUV, beat  
6 your car to the intersection; is that right?

7 A Correct, sir.

8 Q And because the car was ahead of you, Ricky  
9 flashed his lights as a courtesy to say, you've got the  
10 turn?

11 A Correct, sir.

12 Q Because both of you were approaching the  
13 intersection but the SUV was closer?

14 A Correct, sir.

15 Q You pulled up to Fairview and stopped  
16 relatively close to the driveway as you've indicated to  
17 the jurors, correct?

18 A Correct, sir.

19 Q And your car was as much as three car lengths  
20 behind that SUV. Do you recall that?

21 A What we arrived?

22 Q Yes.

23 A I would say a car, car length and a half at  
24 the time.

25 Q Okay. Do you recall being interviewed on or

1 about May 11th, 2023 by individuals not associated with  
2 the Commonwealth?

3 A A gentleman came to my door, but I did not  
4 speak to him.

5 Q Would it refresh your recollection, do you  
6 remember talking in May of 2023 with anybody about this  
7 case?

8 A 2023 may have been the feds. I'm trying to --

9 Q Just listen to my question.

10 A No. I understand.

11 Q Were you talked to by anybody? Don't say who.  
12 Just tell me "yes" or "no."

13 A Yes. I believe so.

14 Q Do you think it would refresh your  
15 recollection as to when that interview took place if  
16 you saw a report?

17 A Yes. Sure.

18 MR. JACKSON: Okay. May I approach, Your  
19 Honor?

20 THE COURT: Yes.

21 BY MR. JACKSON:

22 Q There is a date right up top and then a  
23 highlighted portion at the bottom. If you wouldn't  
24 mind taking a glance at that and look up to me when  
25 you've finished reviewing that.

1 A (Witness complies.)

2 MR. JACKSON: May I approach?

3 THE COURT: Yes.

4 MR. JACKSON: Thank you.

5 THE COURT: Show Mr. Lally where you showed  
6 the report.

7 BY MR. JACKSON:

8 Q Does this refresh your recollection, sir, that  
9 you indicated in that interview --

10 THE COURT: Just two parts. Does it refresh  
11 your recollection.

12 MR. JACKSON: Understood.

13 BY MR. JACKSON:

14 Q Does that refresh your recollection about what  
15 you may have said?

16 A Yes.

17 Q So there was an interview in May of 2023?

18 A Yes.

19 Q And you did indicate some distance that you  
20 were behind the SUV in that interview?

21 A Yes. Well, at the beginning, it was only a  
22 car length and a half. And then probably at the end by  
23 the time we left, it was about three car lengths.

24 Q Okay. Fair enough. So at the end, it was as  
25 much as 20 to 50 feet ahead of you?

1           A     Give or take, yes.

2           Q     Okay. So 50 feet obviously is further than  
3 the length of this courtroom?

4           A     Correct.

5           Q     So at a time when you were in the truck, still  
6 stationary, that SUV had pulled ahead of you at least  
7 three car lengths, correct?

8           A     By the end, yes.

9           Q     Okay. You've already indicated, but I want to  
10 make sure I'm clear about this -- did any car pull in  
11 between Ricky's truck and the SUV when you were sitting  
12 behind the SUV?

13          A     No, sir.

14          Q     You didn't see a Jeep with --

15          A     No, sir.

16          Q     -- a big old snowplow on the front of it?

17          A     No, sir. I did not.

18          Q     That car was never between your car and the  
19 SUV, was it?

20          A     I never saw any other vehicle in between us.

21          Q     Okay. Fair enough. When you got to the  
22 location, you indicated that you had texted your sister  
23 that you were arriving; is that right?

24          A     Correct, sir. Yes.

25          Q     How long before she came out the door to meet

1       you at the car?

2           A     Since I write the text, you mean?

3           Q     Correct.

4           A     Two minutes. Basically, we were coming down  
5 Cedarcrest, and I texted her. I said, we're almost  
6 there.

7           Q     And then once you got on Cedarcrest, it's just  
8 a few seconds to drive up to the driveway at Fairview,  
9 correct?

10          A     Yes.

11          Q     Did she text you back?

12          A     I don't remember.

13          Q     You had your phone out?

14          A     Yes.

15          Q     I'm guessing it was in your lap or in your  
16 hand?

17          A     I would assume, yes.

18          Q     So for a period of time while you were inside  
19 the cab of the truck, as you were pulling up, you were  
20 monitoring your phone to determine whether or not she  
21 was going to text you back, step out of the house,  
22 whatever?

23          A     Yes.

24          Q     Finally, your sister did come out the front  
25 door; is that right?

1 A Correct, sir.

2 Q And, when she came out the front door, you  
3 were looking sort of toward the right?

4 A Now, when you say "front door," like there's  
5 two doors to the house.

6 Q That's a good point. There is what's called a  
7 front door, which is a classic front door, and then a  
8 side door?

9 A Correct, sir. Yes.

10 Q Which door did she come out?

11 A The side door next to the garage.

12 Q Okay. So that would have been close to 90  
13 degrees from where you were seated? You would have  
14 been looking to your right?

15 A Yeah.

16 Q Not necessarily looking straight ahead?

17 A Correct.

18 Q All right. So for that period of time as  
19 you're looking to your right, you see her come out the  
20 side door?

21 A Yes, sir.

22 Q And you watch her approach down the driveway?

23 A Correct.

24 Q So at this point, you don't know what's  
25 happening with the truck in front of you in those



1 moments?

2 A No. I wasn't really paying attention to that  
3 at the time.

4 Q Okay. You indicated that -- you said on  
5 direct examination that you believed that once she was  
6 out and at the truck that she was there for 30 or 40  
7 seconds?

8 A Correct, sir.

9 Q Do you remember actually testifying at a  
10 previous hearing in May of 2022 that it was more than  
11 five minutes that she was out by the truck?

12 A It was not five minutes. I'm saying the whole  
13 time that I was there, probably between two to three.

14 Q Do you remember being asked how long, if you  
15 know, were you talking with Julie out in front of the  
16 house, and you indicating under oath, a little over  
17 five minutes, I would say?

18 A I mean, if you've got it, sure.

19 MR. JACKSON: May I approach?

20 THE COURT: Yes.

21 THE WITNESS: Whatever you guys have.

22 MR. JACKSON: I'm sorry, Mr. Lally. I did it  
23 again.

24 THE COURT: Can you tell Mr. Lally what page  
25 it is?

1 BY MR. JACKSON:

2 Q May I have that back for two seconds?

3 A Yes, sir.

4 Q Thank you. Just take a look at that  
5 highlighted portion and look up when you're finished.

6 A (Witness complies.)

7 MR. JACKSON: May I approach?

8 THE COURT: Yes.

9 BY MR. LALLY:

10 Q Mr. Nagel, does that refresh your  
11 recollection?

12 A It seemed to, yes.

13 Q Okay. And, in fact, was it your testimony  
14 that back in May of 2022, much closer to the event in  
15 question, that you indicated under oath that y'all were  
16 actually talking for closer to five minutes?

17 A The whole thing, probably, yeah.

18 Q Okay. You indicated that you opened up the  
19 truck door; is that right?

20 A I opened up my passenger door. Correct.

21 Q So that doesn't -- in an F-150, does that  
22 automatically open up the suicide door, as well?

23 A No, it does not. There's a handle --

24 Q Okay.

25 A -- on the inside of the door to open.

1           Q     So it was just the passenger door that was  
2 open?

3           A     Correct, sir.

4           Q     Got it. And your sister, Julie, would have  
5 been standing in the crook of that door, correct?

6           A     Yes.

7           Q     So the door would sort of obstruct something  
8 to her right or toward the front of the truck?

9           A     Correct. That would be the door.

10          Q     Right. How tall is the truck? Is it lifted?

11          A     It was, yes.

12          Q     So that door is probably up above eye level?

13          A     It wasn't that high, no.

14          Q     Okay. You talked to -- you indicated that  
15 while she was out there, you turned the music down so  
16 you could have a conversation with her?

17          A     Correct.

18          Q     You talked about whether or not she wanted to  
19 come in the truck and leave, correct?

20          A     Say it again?

21          Q     You talked about whether or not she wanted to  
22 get in the truck and leave?

23          A     I asked her if she was coming. Yes.

24          Q     You also talked about whether or not you would  
25 come in the house and stay?

1 A Yes. She asked that. Yes.

2 Q Okay. So there was a conversation back and  
3 forth about either you staying at 34 Fairview or her  
4 leaving 34 Fairview and getting in the car?

5 A Correct, sir.

6 Q There was also a conversation about whether or  
7 not you guys needed to give her a ride then or she  
8 could get a ride on her own after you guys left if you  
9 wanted to stay?

10 A Correct, sir. Yes.

11 Q And part of that conversation included even  
12 talking about whether or not maybe her mom, your mom,  
13 would come get her after you guys left?

14 A I would assume. Maybe. I don't know. It's  
15 two years ago.

16 Q Right. Understood. But it's safe to say that  
17 there was a dialogue back and forth during which time  
18 you're engaged with your sister to your right. She's  
19 engaged with you, looking straight ahead in the crook  
20 of the door when it's freezing cold out?

21 A Correct.

22 Q All right. And, during this time, your  
23 attention is focused on your sister, obviously?

24 A Yes.

25 Q At some point, she did decide to stay?

1           A     Yup.

2           Q     And, at that point, she then left the crook of  
3 the door. You had shut the door. I'm guessing you  
4 shut the door.

5           A     Yes, sir.

6           Q     And then Ricky figured out, okay, we're going  
7 to get out of here and she's not coming with us.

8           A     Correct.

9           Q     Did y'all wait long enough to see her go  
10 inside the house?

11          A     Just gradually pulling away and watch her walk  
12 in the house.

13          Q     Okay. And that answers my next question.  
14 When you pulled away, you didn't speed away, correct?

15          A     Correct, sir.

16          Q     You gradually, slowly pulled away and out and  
17 around the SUV that was in front of you?

18          A     Correct, sir. Yes.

19          Q     So y'all made up the distance at that point  
20 after you had this maybe five-minute conversation with  
21 your sister. You made up the distance and got up to  
22 the SUV that was in front?

23          A     Yes.

24          Q     All her taillights, all of the taillights,  
25 were intact?

1 A To my acknowledgment (sic), yes.

2 Q I mean, as you sit here --

3 A May I?

4 Q Of course.

5 A I mean, I'm not there to, you know, look at a  
6 car, like oh, is there any damage on a vehicle. It's  
7 12:30 at night. Obviously, I had a few drinks. I'm  
8 not looking for that. I just noticed that the brake  
9 lights were on.

10 Q Right. But the point is, as you sat there,  
11 and you've testified about this before, you noticed no  
12 damage on any of the taillights?

13 A Not to my acknowledgment (sic), no.

14 Q Okay. There's three taillights: one to the  
15 left, one to the right and one center top?

16 A Correct, sir.

17 Q And you didn't notice or note anything out of  
18 the ordinary with regard to the rear of that truck?

19 A No. Like I said, it was dark out.

20 Q Okay. At any point, did you see that SUV in  
21 front of you drive up 50 or 60 feet, slam into reverse  
22 and drive backwards?

23 A No.

24 Q Okay. At any point, did you see that SUV  
25 reverse and hit a pedestrian?

1 MR. LALLY: Objection.

2 THE COURT: I'll allow that. You didn't see  
3 that, right?

4 THE WITNESS: No, ma'am.

5 BY MR. JACKSON:

6 Q At no point did you see a person laying on the  
7 lawn?

8 A No. But I also wasn't looking.

9 Q But you didn't see it?

10 A No.

11 Q And you did see the truck in front of you?

12 A The SUV? Yes.

13 Q Sorry. The SUV in front of you.

14 A Correct.

15 Q All right. You didn't see a person standing  
16 or lying on the ground anywhere around that SUV, did  
17 you?

18 A No.

19 Q And it's not just that you didn't see that SUV  
20 hit a pedestrian. That did not happen while you were  
21 sitting there, did it?

22 MR. LALLY: Objection.

23 THE COURT: You can go ahead and answer.

24 THE WITNESS: No, I did not.

25 BY MR. JACKSON:

1           Q     After you drove away or drove up slowly in  
2 order to drive away, you were the passenger -- or as  
3 you drove away, I should say, you were the passenger  
4 closest to the SUV as you would be passing it, correct?

5           A     Correct, sir. Yes.

6           Q     You looked out the right window of that F-150,  
7 correct?

8           A     Correct.

9           Q     And you could actually see inside the SUV as  
10 it sat there, idling, correct?

11          A     Correct.

12          Q     That's because the dome light was on, isn't  
13 that right?

14          A     Correct, sir.

15          Q     And you noticed that the dome light was on  
16 inside because you could clearly see what was happening  
17 inside the SUV at that time as you passed by?

18          A     I mean, I wasn't directly looking inside. I  
19 was making sure my sister got in the house okay.

20          Q     Right. But you did look inside that SUV?

21          A     As I passed by, yes.

22          Q     And you saw one person?

23          A     That's all I saw at the time. Yes.

24          Q     A female with long hair; is that right?

25          A     Yes.



1 Q And you did not see anybody else inside that  
2 SUV?

3 A No, not to my acknowledgment (sic).

4 Q As a matter of fact, you were asked that in  
5 prior testimony and you indicated in response to that  
6 basic question, no, she was alone, correct?

7 A Correct, sir.

8 MR. JACKSON: May I have a moment, Your Honor?

9 THE COURT: Yes.

10 MR. JACKSON: Thank you, Your Honor. I have  
11 nothing further.

12 THE COURT: Okay.

13 REDIRECT EXAMINATION

14 BY MR. LALLY:

15 Q Just to be clear, sir, she was alone as far as  
16 you could see, correct?

17 A Correct, sir. Yes.

18 MR. LALLY: Nothing further, Your Honor.

19 THE COURT: All right. You are all set,  
20 Mr. Nagel.

21 THE WITNESS: Thank you very much. I  
22 appreciate it.

23 (Whereupon, the witness is excused.)

24 THE COURT: Jurors, this seems like a great  
25 time to take our morning recess.

(Whereupon, the jury is escorted from the courtroom  
and a brief recess is taken.)

(Court resumes.)

(Defendant present. Jury present.)

THE COURT: All right. Your next witness,  
Mr. Lally?

MR. LALLY: Yes, Your Honor. The Commonwealth  
calls Ms. Heather Maxon to the stand.

Whereupon,

HEATHER MAXON

having been first duly sworn, was examined and  
testified as follows:

THE COURT: All right. Whenever you are  
ready, Mr. Lally.

MR. LALLY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LALLY:

Q Good morning, ma'am.

A Good morning.

Q Could you please state your name and spell  
your last name for the jury?

A Heather Maxon, M-A-X-O-N.

Q And where do you live, ma'am?

A Plainville.

Q And how long have you lived there?

1 A My whole life.

2 Q Do you work, ma'am?

3 A I do.

4 Q And what do you do for work?

5 A I'm a nanny.

6 Q And how long have you been doing that?

7 A About four years.

8 Q Ma'am, if I could direct your attention to  
9 January 28th, into January 29th of 2022. Do you recall  
10 those dates?

11 A I do.

12 Q And do you recall what days of the week those  
13 were?

14 A The weekend. Saturday. Friday, Saturday.

15 Q And, as far as the evening of the 28th, what,  
16 if any, plans -- or where were you on that evening?

17 A I was with my boyfriend at the time, Ryan.  
18 And we were out in Canton at local bars.

19 Q And your boyfriend, Ryan, his last name is  
20 Nagel?

21 A Correct.

22 Q And did he live in Canton at that time?

23 A Yes.

24 Q Do you recall about what time it was that you  
25 left to go out to a bar that night?

1           A     I don't remember, no. Sometime in the  
2     afternoon.

3           Q     And who, if anyone, did you go with in  
4     addition to yourself and Mr. Nagel?

5           A     Our other friend, Ricky.

6           Q     And what is Ricky's last name?

7           A     D'Antuono.

8           Q     And how do you know Ricky D'Antuono?

9           A     Through Ryan.

10          Q     He was friends with your boyfriend at the  
11     time, Ryan?

12          A     Yes. Correct.

13          Q     And, at that time, sort of the end of January  
14     2022, how long had you and Ryan been dating?

15          A     I'd say about a year.

16          Q     And did you know at that time sort of his  
17     parents or siblings, things like that?

18          A     I did, yes.

19          Q     And how many siblings does Ryan have?

20          A     Two.

21          Q     Okay. A brother and a sister?

22          A     Correct.

23          Q     And what is the sister's name?

24          A     Julie.

25          Q     Is she older or younger than Ryan?

1 A Younger.

2 Q Now, at some point, you said in the afternoon  
3 or so, you go out to somewhere in Canton, correct?

4 A Correct.

5 Q And do you recall, where is it that you went?

6 A We were at C.F. McCarthy's.

7 Q And how did you get to -- well, prior to going  
8 to C.F. McCarthy's, where were you?

9 A At Ryan's in Canton.

10 Q And do you recall how you got from Ryan's  
11 house to C.F. McCarthy's?

12 A I don't remember. No.

13 Q What I am asking is do you recall did you  
14 drive? Did Ryan drive? How did you --

15 A To C.F. McCarthy's?

16 Q Yes.

17 A I drove.

18 Q And, if you drove, do you recall where you  
19 parked?

20 A I don't.

21 Q C.F. McCarthy's, is that somewhere that you  
22 had been to before?

23 A Yes.

24 Q And do you recall, generally speaking, when  
25 you came into C.F. McCarthy's, where it was that the

1 three of you went?

2 A Can you rephrase the question?

3 Q Sure. Where within the establishment do you  
4 recall -- were you seated at the bar, at a table or --

5 A Oh. The bar.

6 Q And, if you know, about how long a period of  
7 time were you at C.F. McCarthy's?

8 A I don't recall.

9 Q And was it just sort of the three of you that  
10 were there?

11 A Yes.

12 Q And fair to say you went out to a bar and you  
13 were drinking?

14 A Correct.

15 Q Okay. And do you recall what you were  
16 drinking?

17 A I don't remember. It was probably a beer of  
18 some sort.

19 Q And the same for Ryan and the same for Ricky.  
20 Do you recall what they were drinking?

21 A I don't recall. No.

22 Q Typically, would they be drinking beer?

23 A Yeah. I'd say so. Yes.

24 Q So at some point, did you leave C.F.  
25 McCarthy's?

1 A Yes.

2 Q And do you recall where you went following  
3 C.F. McCarthy's?

4 A Hillside Pub.

5 Q And is that in Canton, as well?

6 A Yes.

7 Q And is that somewhere that you had been to  
8 before, as well?

9 A Yes.

10 Q And do you recall how you got from C.F.  
11 McCarthy's to the Hillside?

12 A Ricky drove us.

13 Q And drove you in what?

14 A His truck.

15 Q And do you recall what kind of truck or how  
16 big the truck was or color or anything like that?

17 A I don't recall, no. A Ford, I believe.

18 Q And so Ricky is driving. Where is it that you  
19 and Ryan are within sort of the cab area of the truck?

20 A Ryan was sitting in the passenger seat and I  
21 was in the back seat.

22 Q And the back seat that you were seated in, can  
23 you describe that as far as what kind of back seat did  
24 the back of Ricky's truck have?

25 A I'm sorry. I can't hear you.

1           Q     Sure. Let me ask it a little bit better,  
2     anyway.

3                     The back of Ricky's truck where you were  
4     seated, is that sort of one long seat or is it cabin  
5     chairs or --

6           A     One long seat.

7           Q     Now, you get to the Hillside. Do you know  
8     about what time it was that you arrived at the  
9     Hillside?

10          A     I don't remember.

11          Q     And, obviously, the Hillside is a bar, as  
12     well; is that correct?

13          A     Correct.

14          Q     Did you have more drinks there?

15          A     Probably, yeah.

16          Q     And at any point in time during the course of  
17     -- do you recall about how long it was that you were at  
18     the Hillside?

19          A     I don't recall, no.

20          Q     Do you recall about what time it was that you  
21     left?

22          A     Late.

23          Q     And, during the course of the time that you  
24     were at either C.F. McCarthy's or the Hillside as far  
25     as was anybody from your group, as far as yourself,



1 Ryan or Ricky, sort of overly intoxicated in any way  
2 that you observed?

3 A No.

4 Q When you went to the Hillside, was it just the  
5 three of you again, or did you eat or who, if anyone  
6 else, did you speak to or meet up with there?

7 A We met up with friends. Yes.

8 Q And so a group of friends?

9 A A group. Yes.

10 Q And do you know approximately how many people  
11 were in the group?

12 A Maybe two.

13 Q So a couple other people and --

14 A Correct.

15 Q And, when you left from the Hillside, where  
16 did you go?

17 A We went to pick Julie up from her friend's  
18 house.

19 Q And the friend's house that you were going to,  
20 is that someone that you knew?

21 A No.

22 Q And is that a house that you had ever been to  
23 before?

24 A No.

25 Q And, as far as sort of -- did you take Ricky's

1 truck again?

2 A Correct.

3 Q And, as far as the seating arrangements that  
4 you described earlier from C.F. McCarthy's to the  
5 Hillside, what, if any, difference was there between  
6 Hillside and the friend's house?

7 A There was no difference. We were sitting in  
8 the same seats.

9 Q And do you recall or do you know where, sort  
10 of now that you've gone to the location, do you know  
11 where that friend's house was?

12 A Can you rephrase? I'm sorry.

13 Q Sure. Following leaving the Hillside and  
14 going to the friend's house, you had never been there  
15 before, correct?

16 A Correct.

17 Q And having now gone to the friend's house to  
18 pick up Julie, do you know where that friend's house  
19 is?

20 A To this day?

21 Q Yes.

22 A No.

23 Q Okay. Was it still within the town of Canton?

24 A Yes.

25 Q Do you recall anything about the route that

1 you took from the Hillside to Julie's friend's house?

2 A No. All I know is that we were taking a left  
3 onto the street of the house, where the house is  
4 located.

5 Q So as you're approaching the street where the  
6 house is located, Ricky is taking a left onto the  
7 street?

8 A Correct.

9 Q And what, if anything, do you recall about  
10 that time period when Ricky is taking the left onto the  
11 street?

12 A Could you rephrase the question?

13 Q Sure. Ricky is pulling up to the street?

14 A Correct.

15 Q Is there a blinker or a directional that he  
16 uses prior to pulling onto the street?

17 A I don't recall.

18 Q And you're making a left-hand turn; is that  
19 correct?

20 A Correct.

21 Q And, as Ricky is making a left-hand turn,  
22 what, if any, other vehicles do you observe in the area  
23 at that time?

24 A There was another vehicle in front of us on  
25 the same road coming from the opposite direction.

1 Q And can you describe that vehicle in any way  
2 as far as size, shape, color, anything?

3 A Not the color, but it was definitely an SUV.

4 Q And, as far as prior to either vehicle turning  
5 onto the road where Julie's friend lived, what, if  
6 anything, did Ricky do with regard to the lights in the  
7 vehicle?

8 A I'm sorry. I can't hear you.

9 Q Sure. As you're pulling onto the street and  
10 the other car is coming in the opposite direction,  
11 what, if anything, did Ricky do with regard to the  
12 lights on the truck that you were in?

13 A The lights on the truck that we were in?

14 Q Yes.

15 A Well, we let the other car that was coming  
16 from the opposite direction, we let them take a right  
17 onto the street first. We yielded to them.

18 Q And yielded to them. What, if anything, did  
19 Ricky do to signal to that other driver that they could  
20 go ahead?

21 A He could have flashed his lights or put his  
22 blinker on. I don't recall.

23 Q From this other vehicle as far as the interior  
24 of the vehicle as you're yielding to this vehicle  
25 taking a right, what, if any, observations did you make

1 of people inside that other vehicle?

2 A I noticed a male and a female in the car.

3 Q And where within the vehicle was the male and  
4 the female that you observed situated or seated in the  
5 car?

6 A The female was driving and the male was in the  
7 passenger seat.

8 Q And then beyond them being a male or female,  
9 what, if any, sort of other observation did you make of  
10 what they looked like or anything like that?

11 A No. I didn't make any other observations.

12 Q Let me ask it this way: Were they African-  
13 American, Caucasian, older, younger?

14 A Caucasian. Yeah, Caucasian.

15 Q Okay. So Caucasian female?

16 A Correct.

17 Q Caucasian male?

18 A Correct.

19 Q And, as far as age or anything like that,  
20 could you tell anything in regard to that?

21 A Not really, no.

22 Q And, as far as your sort of differentiation  
23 between male versus female, what, if anything, did you  
24 observe about them that made you sort of characterize  
25 them that way?

1 A Characterize them as a male and a female?

2 Q Yes.

3 A Long hair and short hair.

4 Q So that vehicle pulls onto the street that  
5 you're going onto in front of you, correct?

6 A Correct.

7 Q And Ricky then proceeds to make the left-hand  
8 turn?

9 A Correct.

10 Q Now, as Ricky is driving down the street to  
11 wherever this friend's house is, where does that SUV  
12 that you observed making the turn, where does that go?

13 A It was parked on the street, outside a house.

14 Q And so as far as from the time that you're --  
15 I'm sorry. I'm just waiting for the truck to go by.

16 So with regard to from the time Ricky yields  
17 to that car coming in the opposite direction and the  
18 time that you pull up to the house, was that SUV in  
19 front of Ricky's truck for the entire time?

20 A Yes.

21 Q And where did that vehicle go with relation to  
22 the house that you eventually stopped at?

23 A I'm not sure I understand the question.

24 Q Did the SUV that was in front of you go to the  
25 same house?

1           A     Yes.

2           Q     Okay. And, when you get to the house, where  
3 was it that Ricky parked the truck in relation to the  
4 house?

5           A     Right outside the house. Probably a little  
6 past the mailbox, past the driveway.

7           Q     And, when you make that turn from whatever  
8 street that is onto the street where the friend's house  
9 is, about how long down the street did you go before  
10 Ricky pulled over in the area of that mailbox?

11          A     I don't know. I'm not sure.

12          Q     And, when Ricky comes to a stop in the area of  
13 that mailbox, where is -- or can you describe the  
14 distance sort of between where you are in Ricky's truck  
15 and where the vehicle is in front of you?

16          A     We were parked right behind it. Just a couple  
17 feet, maybe.

18          Q     And, during the time that you were outside of  
19 that that friend's house, did that car stay still, move  
20 or something else?

21          A     It just stayed still.

22          Q     So your memory is that the vehicle was  
23 essentially in the same place in front of you the  
24 entire time that you were there?

25          A     Correct.

1           Q     And, from that sort of vantage point from  
2     behind the vehicle, did you observe any sort of damage  
3     or anything to the rear of the vehicle as it was in  
4     front of you?

5           A     I did not.

6           Q     And, at any point in time, did you see anybody  
7     exit from that vehicle at any point?

8           A     No.

9           Q     And did you see anybody exit from that vehicle  
10    and go towards the house?

11          A     No.

12          Q     Now, as far as when you were pulling up to the  
13    house, what was the weather like at that point, if you  
14    recall?

15          A     It was snowing out.

16          Q     And what, if anything, do you recall as far as  
17    sort of accumulation of that snow at that time?

18          A     It was a light snow, but it was sticking to  
19    the ground. It started to stick.

20          Q     And, as far as when you're pulling up behind  
21    that vehicle, as far as behind that vehicle, did you  
22    observe any sort of marks in the snow from that  
23    vehicle?

24          A     No.

25          Q     So no tire tracks or anything that you see?



1           A     Well, tire tracks on the road, obviously. But  
2 other than that, no.

3           Q     Okay. So tire tracks on the road in behind  
4 that vehicle, coming up to the point where it was  
5 parked?

6           A     Correct.

7           Q     Okay. And around that vehicle, you never  
8 observed anybody exit the vehicle, correct?

9           A     Correct.

10          Q     Okay. And you also didn't observe any sort of  
11 footprints or anything like that in the snow around the  
12 vehicle?

13          A     Correct.

14          Q     Now, following the time that you pull up in  
15 that area in the mailbox in front of the house, who, if  
16 anyone, came out of the house?

17          A     Julie did.

18          Q     And where did she come when she came out of  
19 the house?

20          A     She walked right over to Ricky's truck.

21          Q     And, when she comes over to Ricky's truck,  
22 who, if anyone, did she speak with in the truck?

23          A     She was speaking to all three of us.

24          Q     And, at some point, did she get in the truck  
25 and did she go home with you or no?

1 A No.

2 Q And where did she go after she left?

3 A Back inside the house.

4 Q Did you see her sort of physically go back  
5 inside the house?

6 A I did.

7 Q Okay. Is that something that your boyfriend  
8 at the time, Ryan, sort of specifically waited for her  
9 to get back in the house?

10 A Possibly. I'm not sure.

11 Q Now, as far as, if you recall, when Julie came  
12 down to the truck and when Julie went back to the  
13 house, did she leave footprints in the snow or anything  
14 that you could see at that time?

15 A I couldn't see but I assume.

16 Q Nothing specifically that you saw?

17 A Nothing specific, no.

18 Q Okay. Now, that time period that Julie was at  
19 the side of Ricky's truck, talking to all three of you  
20 inside, about how long a period of time was that?

21 A Not long. I'd say three, maybe five minutes.

22 Q And, in general terms, what was the discussion  
23 about?

24 A You know, just chitchat. She invited us  
25 inside of the home. And I had told her that I did not

1 want to go inside. I was tired and it was late. I  
2 just wanted to get back home. So she was like, okay,  
3 went back in, and we left.

4 Q And, when you left, was that vehicle that was  
5 parked in front of you, was that in the same position  
6 as you initially described when you left?

7 A Yes.

8 Q And do you recall as far as Ricky pulling away  
9 from the curb or pulling away from the house to go  
10 home, did he have to sort of back out to get around it  
11 or no?

12 A I don't recall.

13 Q And, when you left, was that vehicle basically  
14 -- as you're pulling away, that vehicle is in the same  
15 position, correct?

16 A Correct.

17 Q Now, that vehicle that was parked in front of  
18 you, was it running or could you tell?

19 A I could tell that it was running, yes. The  
20 lights were on.

21 Q And which lights were on?

22 A The, you know, headlights, taillights. The  
23 inside car lights were also on.

24 Q Now, as far as, as you're pulling away from  
25 that house and heading off to home, which way were you

1 facing as you came away from the house?

2 A Could you rephrase?

3 Q Let me ask a different question, please.

4 So when you pull up alongside of the house,  
5 which side of Ricky's truck is facing closer to the  
6 house? Is it the driver's side, the passenger side or  
7 something else?

8 A The passenger side.

9 Q And so as the vehicle is pulling away, are you  
10 pulling away in the same direction?

11 A Correct.

12 Q So the passenger side. So facing the house as  
13 you're pulling away?

14 A Yes.

15 Q And you were looking -- let me ask you this:  
16 As far as when Julie left the truck and went back in  
17 the house, was she fully inside the house at the time  
18 that the truck was pulling away?

19 A Yes.

20 Q Okay. And so when the truck is pulling away,  
21 where are you facing and sort of what are you looking  
22 at as you are passing by the house and passing by the  
23 SUV?

24 A I was looking out the passenger side window.  
25 So facing the house.

1 Q And, as you go past the SUV, what, if  
2 anything, did you observe within the SUV?

3 A I observed the female in the driver's seat.

4 Q And did it appear to be the same female that  
5 you observed as you were turning onto the roads of  
6 Julie's friend's house?

7 A Correct.

8 Q And what, if anything, did you observe the  
9 female and -- where was she in the vehicle?

10 A The driver's side.

11 Q So still in the driver's seat as you had  
12 observed earlier?

13 A Correct.

14 Q Okay. And what, if anything else, could you  
15 see as far as the driver, as far as what was she doing  
16 or anything like that?

17 A I didn't observe anything else. She was just  
18 sitting there.

19 Q And, as far as, as you were passing, what, if  
20 anything, did you note as far as the sort of interior  
21 lighting within the vehicle?

22 A Yes. The interior lighting was on. So that's  
23 why I had noticed as we were pulling away the female in  
24 the driver's side, driver's seat.

25 Q As far as the male passenger that you saw as

1       you were pulling onto the street, could you see him at  
2       that point?

3           A     I did not see any other person. Just the  
4       female in the driver's seat.

5           Q     And, as you're passing by the vehicle, did you  
6       adjust -- I mean, how intently were you looking inside  
7       this vehicle?

8           A     Not very intently. Just kind of as we were  
9       passing by.

10          Q     So you didn't sort of change your positioning  
11       to see better within the vehicle? You didn't lean  
12       forward, lean back or anything like that?

13          A     No.

14          Q     And, after you left that house, where did you  
15       go from there?

16          A     Back to Ryan's.

17          Q     Is that where you spent the night?

18          A     Correct.

19               MR. LALLY: If I may have a moment, Your  
20       Honor?

21               THE COURT: Yes.

22       BY MR. LALLY:

23          Q     Do you know about what time it was that you  
24       got home?

25          A     I don't recall.

1 Q And by "home," I mean back to Ryan's house?

2 A Back to Ryan's? No. I don't remember.

3 MR. LALLY: Just one moment, Your Honor.

4 THE COURT: Yes.

5 MR. LALLY: Thank you, ma'am. I have no  
6 further questions for this witness, Your Honor.

7 MR. JACKSON: May I, Your Honor?

8 THE COURT: Yes.

9 MR. JACKSON: Thank you.

10 CROSS-EXAMINATION

11 BY MR. JACKSON:

12 Q Hello, Ms. Maxon.

13 A Hello.

14 Q The first time you were ever interviewed about  
15 this case by law enforcement was September 1st, 2023;  
16 is that right?

17 A Correct.

18 Q So you were not interviewed at or around  
19 February 7th when Ryan was interviewed?

20 A No.

21 Q February 7th, 2022.

22 A Right. No.

23 Q So it was a full 19 months after the events in  
24 question that you were first contacted by law  
25 enforcement?

1           A     Correct.

2           Q     And you gave your statement for the first time  
3 at that point?

4           A     Correct.

5           Q     The truck that you were in, that -- I can't  
6 remember. Did you say the name of the truck? Was it a  
7 Ford F-150?

8           A     Correct.

9           Q     Okay. That was turning left onto Fairview  
10 from Cedarcrest. Do you recall that?

11          A     Correct. Yes.

12          Q     Do you know the names of the streets or are  
13 you just --

14          A     I don't know the names of the streets, no.  
15 Yeah. I'm not familiar with the town of Canton.

16          Q     Okay. That was my next question. If I showed  
17 you a map, for instance, that wouldn't really do any  
18 good because you don't know the street names?

19          A     Yeah. No.

20          Q     Okay. Fair enough. Ricky was driving. Ryan  
21 was in the front passenger seat and you were in the  
22 super cab portion of the truck, correct?

23          A     Correct.

24          Q     So you would have been situated directly  
25 behind Ryan?



1 A I was in the middle.

2 Q In the middle seat?

3 A Correct. So I was in between Ryan and Ricky.

4 Q Understood. Did you indicate that at some  
5 point you could see pretty clearly into the SUV as it  
6 turned, as y'all yielded way and it turned to what  
7 would appear to be its right in front of you?

8 A Correct.

9 Q And you could clearly see inside the passenger  
10 compartment there was a female driving; is that right?

11 A Correct.

12 Q And there was a male sitting next to her?

13 A Yes.

14 Q You indicated that by the time you guys  
15 negotiated your turn, sped up, made the turn, headed up  
16 Fairview, that SUV had already come to a stop?

17 A Correct.

18 Q And how far behind that SUV would you estimate  
19 Ricky pulled the truck in terms of car lengths? One  
20 car length? Two car lengths? Right on the bumper?

21 A Yeah. Less than one car length. I would say  
22 a couple feet.

23 Q A couple feet, meaning two or three feet?

24 A Yes.

25 Q So that's your recollection as you sit here?

1 A Correct.

2 Q Did you notice anything wrong with the back of  
3 the SUV?

4 A I did not.

5 Q You saw brake lights on?

6 A Yes.

7 Q How many brake lights?

8 A Two.

9 Q Left and right, correct?

10 A Correct. Yes.

11 Q Was there one in the top center?

12 A I don't recall.

13 Q You certainly did not see a full-sized Jeep  
14 Wrangler outfitted with a snowplow between the SUV and  
15 Ricky's truck?

16 A I did not.

17 Q All right. It sounds like a ridiculous  
18 question. You didn't see any other cars? There were  
19 no other cars between the two of you?

20 A Correct.

21 Q Okay. Is it fair to say that when you pulled  
22 up behind the SUV, other than noting that it was there,  
23 your attention was not necessarily focused on that SUV?

24 A Correct.

25 Q There was nothing extraordinary or out of the

1 ordinary about that car?

2 A Correct.

3 Q You were there to pick up somebody, correct?

4 A Yes.

5 Q Or at least potentially?

6 A Right.

7 Q So I'm guessing your focus would probably be  
8 to the right where the front doors were of that house?

9 A Sure.

10 Q And you knew that Ryan had been communicating  
11 with his sister. And so you were sort of expectant in  
12 terms of watching Julie Nagel possibly come out of the  
13 house?

14 A Correct.

15 Q So during those moments, you weren't  
16 necessarily paying attention to what was happening  
17 directly in front of you, outside?

18 A Right.

19 Q Okay. You indicated that you believed that  
20 the chitchat that happened with Julie Nagel up at the  
21 truck was about five minutes?

22 A Give or take.

23 Q Okay. At that point, was one of the doors  
24 opened?

25 A I don't believe so. We rolled our windows

1 down --

2 Q Did you also --

3 A -- to communicate.

4 Q I'm so sorry.

5 A We rolled our windows down to communicate with  
6 Julie.

7 Q Okay. So you don't recall one of the doors  
8 being opened and Julie standing in the crook of the  
9 door, having this conversation with Ryan?

10 A I don't recall.

11 Q Is that possible?

12 A Sure. It's possible.

13 Q Okay. Your memory is not necessarily focused  
14 on that?

15 A Right.

16 Q But you do know that there was a  
17 communication?

18 A Yes, for sure.

19 Q They were talking about whether or not you  
20 wanted to go inside the house?

21 A All three of us.

22 Q Okay. You, Ricky and Ryan?

23 A And Ryan, yes.

24 Q And y'all were talking about whether or not  
25 Julie was going to come with y'all; is that right?

1 A Correct.

2 Q And there was even a discussion about whether  
3 or not Julie's mom might pick her up?

4 A I don't recall.

5 Q So the specifics of the conversation you don't  
6 necessarily recall, but you do know that y'all talked  
7 about five minutes?

8 A Give or take, yes.

9 Q During the course of that five-minute  
10 conversation, where was your focus?

11 A On Julie.

12 Q Ultimately, the three of you did pull away  
13 from the driveway area where you were parked?

14 A Could you rephrase?

15 Q Sure. Ultimately, y'all did move, the truck  
16 did move, past the house and moved past the SUV?

17 A Once we left, yes.

18 Q As you drove by the SUV, you noticed that the  
19 dome light was on?

20 A Could you explain what the dome is?

21 Q Dome light. The interior light.

22 A Yes.

23 Q Dome.

24 A Yes.

25 Q Yes. So you could see it lit up the interior

1 of the car?

2 A Correct.

3 Q It was a late model SUV, probably a pretty  
4 bright light. You could see inside the car?

5 A I could.

6 Q You clearly could see -- well, you could see a  
7 female?

8 A Correct.

9 Q By the way, do you recognize the person to my  
10 left?

11 A I do but only because of --

12 Q That was a terrible question. Of course you  
13 do.

14 A Yes.

15 Q Do you recognize her from that night? Is she  
16 the person that was in the driver's seat or do you  
17 know?

18 A I don't know.

19 Q Okay. But the person you did see was a  
20 Caucasian female with long hair?

21 A Correct.

22 Q Okay. As you drove by, the interior light was  
23 on well enough that you could see the female clearly?

24 A Correct.

25 Q And you could also see that there was no male

1 in the truck, as well, correct?

2 A I don't know. The other male that I saw in  
3 the SUV before they pulled onto Fairview?

4 Q Correct.

5 A He could have been in when it was parked. But  
6 the only person I saw as we were pulling away was the  
7 female driver.

8 Q So when you pulled away, you looked to your  
9 right out your passenger window, correct?

10 A Uh-huh. Correct.

11 Q The interior dome light was on?

12 A Yes.

13 Q And you've testified to this before, correct?

14 A Correct.

15 Q And you've been asked these questions in  
16 another proceeding, correct?

17 A Correct.

18 Q And you testified the only person you saw in  
19 the interior of that car at that time when y'all pulled  
20 away was the female?

21 A Okay.

22 Q Is that right?

23 A Sure, if I remember correctly.

24 MR. JACKSON: Okay. That's all I have. Thank  
25 you.

1 THE COURT: Mr. Lally?

2 REDIRECT EXAMINATION

3 BY MR. LALLY:

4 Q So, Ms. Maxon, during the time that you were  
5 asked about not sort of focusing on the SUV in front of  
6 you, fair to say that you would have seen a six-foot  
7 man walking away from that car, going towards the  
8 house?

9 A Correct.

10 Q You were at a vantage point where you would  
11 have seen that had that occurred, correct?

12 A Correct.

13 Q And you didn't see that?

14 A I did not.

15 MR. LALLY: Nothing further.

16 THE COURT: All right. So you are all set,  
17 Ms. Maxon.

18 THE WITNESS: Okay. Thank you.

19 (Whereupon, the witness is excused.)

20 THE COURT: Your next witness, Mr. Lally?

21 MR. LALLY: Yes, Your Honor. The Commonwealth  
22 would call Ricky D'Antuono.

23 Whereupon,

24 RICKY D'ANTUONO

25 having been first duly sworn, was examined and



1 testified under oath as follows:

2 THE COURT: When you're ready, Mr. Lally.

3 MR. LALLY: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. LALLY:

6 Q Good morning, sir.

7 A Good morning.

8 Q Could you please state your name and spell  
9 your last name for the record?

10 A Richard D'Antuono.

11 Q And, Mr. D'Antuono, where do you live?

12 A In Canton.

13 Q And how long have you lived there?

14 A My whole life. Thirty years.

15 Q And do you work, sir?

16 A I do.

17 Q What do you do for work?

18 A I do flooring.

19 Q And how long have you been doing that?

20 A I'd say two years.

21 Q Now, sir, if I could turn your attention to  
22 the evening of January 28th, into the early morning of  
23 January 29th, 2022, do you recall those days?

24 A Yes.

25 Q And do you recall what days of the week those

1 were?

2 A The weekend.

3 Q And do you recall whether or not you worked  
4 that day?

5 A I don't.

6 Q And, at some point in time on that day, did  
7 you go out for the evening, leave your house and go  
8 somewhere?

9 A Yes.

10 Q And did you drive from your house to wherever  
11 you went?

12 A Yes.

13 Q And what kind of car did you have at that  
14 time?

15 A A pickup truck.

16 Q And, specifically, what kind of pickup truck?

17 A A Ford F-150.

18 Q And what color was that?

19 A Dark gray.

20 Q And the interior of your pickup truck as far  
21 as front seat, back seat, can you describe for the jury  
22 what that looked like?

23 A There's two front seats and a bench seat in  
24 the back. It has the suicide doors.

25 Q And, when you left your house in your F-150,

1 where did you initially go?

2 A I went to a place in Canton called C.F.  
3 McCarthy's.

4 Q And did you pick up anyone on the way there?

5 A I did not. I met people there.

6 Q And C.F. McCarthy's, that's a place that  
7 you've been to before; is that correct?

8 A Correct.

9 Q Were you familiar with it on that night?

10 A Yeah.

11 Q And where did you park your truck in relation  
12 to C.F. McCarthy's?

13 A I wouldn't know that for sure.

14 Q Is there a Walgreens lot somewhere around  
15 there?

16 A Yeah. Right across the street, normally where  
17 we would.

18 Q So normally when you went there, that's sort  
19 of where you would have parked in relation to the bar?

20 A Usually, yeah.

21 Q So C.F. McCarthy's is located on Washington  
22 Street; is that right?

23 A Yes.

24 Q So it would have been the downtown section?

25 A Yes.

1 Q And, when you say "where we would have  
2 parked," who, if anyone, were you meeting at C.F.  
3 McCarthy's on that night?

4 A I was meeting Ryan and Heather.

5 Q And, just to be clear, you're talking about  
6 Ryan Nagel and Heather Maxon?

7 A Correct.

8 Q And how did you know Ryan Nagel?

9 A I grew up with Ryan. So I've known him for a  
10 long time.

11 Q How would you sort of describe the two of your  
12 relationship?

13 A Best friends.

14 Q And Heather Maxon. How did you know her?

15 A Through Ryan. They were dating.

16 Q And do you know about how long they had been  
17 dating, coming into sort of that time frame or that  
18 evening?

19 A I don't, not an exact time.

20 Q Okay. So you come into C.F. McCarthy's. And  
21 do you recall sort of where within the establishment  
22 you went?

23 A Probably sat at the bar, I would assume.

24 Q And, when you went there that evening, do you  
25 recall, did you meet anybody else there or was it just

1       you, Mr. Nagel and Ms. Maxon?

2           A     I can really only recall us three. I mean,  
3       there might have been people there, but we didn't meet  
4       up with them. They might have just been there already.

5           Q     So no one specifically you had plans to meet  
6       with while you were there or anything like that?

7           A     No.

8           Q     And do you know about what time it was that  
9       you got to C.F. McCarthy's?

10          A     Not a definite time, but maybe mid-afternoon.

11          Q     And, as far as you went out to a bar, do you  
12       recall sort of what either you, Ryan or Ms. Maxon had  
13       to drink that evening?

14          A     Usually just a few beers is all we would  
15       drink, nothing else but that.

16          Q     And did you have any drinks that evening?

17          A     I had a few. Yeah.

18          Q     Okay. And what was it typically that you  
19       drank?

20          A     A beer.

21          Q     Any particular kind of beer?

22          A     I would assume Bud Lights, I guess.

23          Q     Now, do you know about how long it was that  
24       you were at C.F. McCarthy's?

25          A     Not an exact time again, but a couple hours.

1           Q     And, after that couple hours or so, where did  
2 you go from there?

3           A     We went to another place in Canton called  
4 Hillside.

5           Q     And, just to be clear, when you say "we," you  
6 mean yourself, Mr. Nagel and Ms. Maxon?

7           A     Yeah. I drove us three.

8           Q     Okay. So you drove all three of you in your  
9 F-150 pickup?

10          A     Yes.

11          Q     And about how long a ride is that from C.F.  
12 McCarthy's to the Hillside?

13          A     I'd say 10.

14          Q     And, just to be clear, 10 minutes; is that  
15 right?

16          A     Yeah. Ten minutes. Yes.

17          Q     Is that also within Canton, too?

18          A     Yes.

19          Q     Is that somewhere that you had been before or  
20 somewhere that you were familiar with?

21          A     Yeah.

22          Q     Similar to C.F. McCarthy's, when you arrived  
23 there as far as was there anybody else that you were  
24 meeting there or why did you go to the Hillside?

25          A     We met up with our one friend, John.

1           Q     So adding sort of just another person to the  
2 group and going to a different location; is that  
3 correct?

4           A     Yes.

5           Q     Now, as far as over the course of the evening  
6 either at C.F. McCarthy's or the Hillside as far as  
7 yourself, Mr. Nagel and Ms. Maxon, what, if any,  
8 observations did you have to make as far as level of  
9 intoxication? Was anybody overly intoxicated?

10          A     No.

11          Q     And, if you know, about how long a time period  
12 were you at the Hillside?

13          A     I would say a few hours again.

14          Q     Anything either from C.F. McCarthy's or the  
15 Hillside from that evening that sort of jumps out at  
16 you in any particular way?

17          A     No.

18          Q     So relatively regular, a sort of weekend night  
19 out with you and your friends?

20          A     Correct.

21          Q     When you left the Hillside, do you know about  
22 what time that was?

23          A     Again, not a definite time. Maybe around  
24 midnight.

25          Q     And, when you left the Hillside, where was it

1       that you were going?

2           A     To pick up Ryan's sister, Julie.

3           Q     And, if you know, how did that sort of come  
4       about as far as when did you become aware that that was  
5       a destination that you would be going to?

6           A     I would say towards the end of the night, I  
7       was told that we would be giving her a ride on our way  
8       home.

9           Q     And so you leave the Hillside and you get into  
10      your pickup; is that right?

11          A     Yes.

12          Q     And Mr. Nagel and Ms. Maxon are with you?

13          A     Correct.

14          Q     And where were they seated within the pickup  
15      when you were driving?

16          A     Ryan was in my passenger seat and Heather was  
17      in the back.

18          Q     And do you recall sort of how she was  
19      positioned in the back as far as on the passenger side,  
20      the middle or the driver's side?

21          A     Not specifically. I vaguely remember her  
22      maybe laying down.

23          Q     And, when you're going from the Hillside to  
24      pick up Julie Nagel, you knew Julie Nagel at the time;  
25      is that right?



1 A Correct.

2 Q Did you know the location where you were going  
3 to pick her up from?

4 A Not the exact location but the area.

5 Q And, by "area," sort of what was described to  
6 you as where to drive?

7 A I believe towards the Kennedy School.

8 Q And the Kennedy School, is that an elementary  
9 school?

10 A Yeah.

11 Q And you're familiar with that as growing up in  
12 the town of Canton?

13 A Yes.

14 Q So if you could describe to the jury sort of  
15 the route that she would have taken, going from the  
16 Hillside to the Kennedy School or in that general area?

17 A Yeah. I would have taken 138, which, I  
18 believe, is Turnpike Street, a right onto Washington  
19 Street and then a right onto Dedham Street and then a  
20 left onto Cedarcrest and I believe a left onto  
21 Fairview.

22 Q And those last couple of turns that you took  
23 as far as the lefts, was that something that you knew  
24 ahead of time or was someone within the truck directing  
25 how to go?

1           A     I knew up until Cedarcrest.

2           Q     And then who was directing you from there?

3           A     I believe Ryan would be.

4           Q     Now, when you arrive at taking that turn from  
5 Cedarcrest onto Fairview, what, if any, other vehicles  
6 did you observe in the area at that time?

7           A     While driving?

8           Q     Yes. While driving, as you were about to make  
9 the turn.

10          A     No vehicles that I can recall.

11          Q     After making that turn onto Fairview, what, if  
12 any, vehicles did you observe at that time?

13          A     There was a vehicle parked in front of me in  
14 front of the house.

15          Q     Now, as far as making that turn, you were  
16 using your directional as you're driving along, taking  
17 lefts and rights?

18          A     I would assume so, yeah.

19          Q     Do you assume that you turn on your left  
20 directional before pulling from Cedarcrest onto  
21 Fairview?

22          A     Yeah.

23          Q     And, when you -- as far as the house that you  
24 were going to, when you make that turn from Cedarcrest  
25 onto Fairview, how far into the street was the house

1 that you were going to?

2 A Like 20 seconds, maybe.

3 Q So what I'm asking is, basically, was it the  
4 first house as you come in or did you drive the whole  
5 street in order to get to the house? How close to  
6 Cedarcrest was the house?

7 A I think it's a couple of houses on the right.

8 Q So a couple of houses on the right-hand side?

9 A Yeah.

10 Q Okay. So the right-hand side from your  
11 perspective would be the passenger side or the driver's  
12 side or what?

13 A The passenger side.

14 Q And, when you get in the area of the house,  
15 you park at some point?

16 A Yes.

17 Q And where was it in relation to the house that  
18 you parked the truck?

19 A Right in front of the driveway.

20 Q Now, you mentioned that there was another  
21 vehicle that was parked in front of the house, as well;  
22 is that correct?

23 A Correct.

24 Q Where was that vehicle in relation to where  
25 you parked?

1 A I would say maybe 10, 20 yards in front of me.

2 Q And so from the 10, 20 yards or so in front of  
3 you, you could observe that vehicle?

4 A I could.

5 Q And, from your vantage point where you were  
6 seated in your truck behind the vehicle, what, if any,  
7 damage or anything did you observe to the vehicle at  
8 that time?

9 A None.

10 Q And, as far as you could tell, was the vehicle  
11 running or off or something else?

12 A I believe running.

13 Q And what about your observations of the  
14 vehicle leads you to believe that it was running?

15 A There were either taillights or brake lights.  
16 I'm not sure which ones.

17 Q I'm sorry. If you could just repeat that?

18 A It was either taillights or brake lights, but  
19 I'm not sure which ones they were.

20 Q And that was on the back of the vehicle; is  
21 that right?

22 A Correct.

23 Q And how many sort of brake lights did you  
24 observe on the vehicle?

25 A I would assume two.

1           Q     So left and right, did you observe anything  
2 sort of in the middle of the vehicle?

3           A     No.

4           Q     Okay. And, during the time that you were  
5 behind this vehicle, at any point in time did you  
6 observe anybody get out of the vehicle?

7           A     I did not.

8           Q     And, from where you were situated behind the  
9 vehicle at this initial sort of point when you pull up  
10 about 20 or so yards behind it, could you see any  
11 lights on inside of the vehicle?

12          A     I could not.

13          Q     Now, when you arrive at the house and park  
14 sort of in the area of the driveway, at some point does  
15 Ryan reach out to his sister, Julie?

16          A     I believe so.

17          Q     And, at some point, does Julie come out of the  
18 house?

19          A     Yes.

20          Q     And, if you know, about how long a period of  
21 time are we talking about from the time that you pull  
22 up and park and the time that Julie comes out of the  
23 house?

24          A     Very quickly.

25          Q     And, when she comes out of the house, where is

1 it that she comes to?

2 A To my passenger window.

3 Q Now, as far as at this time that you had left  
4 the Hillside and you're driving over to your sister's  
5 friend's house, what do you recall about sort of the  
6 weather and what was it doing at that point?

7 A I believe it just started to snow.

8 Q And, as far as the snow was concerned, what,  
9 if any, observations did you make as far as  
10 accumulation was concerned?

11 A I believe it was starting to stick.

12 Q Now, as far as that vehicle that was in front  
13 of you, what, if anything, did you observe within the  
14 snow, on the streets, that was starting to stick in  
15 behind that vehicle?

16 A I didn't observe it.

17 Q Did you see any tire marks or anything like  
18 that leading up to the back of the vehicle?

19 A Not that I can remember.

20 Q Not that you can remember. Okay.

21 Now, when Julie came out of the house, she  
22 obviously walked on foot from the house to the truck,  
23 correct?

24 A Correct.

25 Q And, as far as from her path either to the

1 truck or back from the truck to the house, did you  
2 observe any sort of footprints or anything like that  
3 she left in the snow while she was walking?

4 A No.

5 Q Now, when she comes to the truck, do you  
6 recall how it was -- obviously, there is some  
7 conversation, correct?

8 A Correct.

9 Q And, prior to her coming up to the truck, was  
10 there music on, radio on? Anything like that?

11 A Maybe while driving there but I don't believe  
12 while we talked.

13 Q Okay. So that would have been something  
14 somebody would have turned down in order to have a  
15 conversation with Julie when she comes up to the truck?

16 A Correct.

17 Q And, when she comes up to the side of the  
18 truck, do you remember how it was that you conversed or  
19 anyone in the vehicle conversed with her? Was it  
20 through the door, through a window?

21 A Through the open passenger window.

22 Q Okay. Do you recall whether or not the  
23 passenger side door of the truck was opened at any time  
24 by Ryan or anybody else?

25 A No.

1 Q You don't recall or it wasn't?

2 A I don't believe it was.

3 Q Now, in your truck when you open the passenger  
4 side door, what, if anything, occurs with regard to the  
5 lighting inside the truck?

6 A I believe the interior light would pop on.

7 Q And where would that interior light be in  
8 relation to sort of the interior? Is that in the  
9 driver's side, passenger side, center or something  
10 else?

11 A I think center, center roof.

12 Q Now, the conversation with Julie, about how  
13 long did that take place or how long did that go on  
14 for?

15 A I would say maybe two minutes.

16 Q And, if you recall, just in general terms,  
17 what was sort of the discussion about?

18 A That she no longer was going to take the ride  
19 and asked if we wanted to come in.

20 Q And did yourself or anybody else from your  
21 group express any interest in going in this house?

22 A No.

23 Q And, as far as you were aware, were there  
24 other arrangements that Ms. Nagel, Julie, had made for  
25 getting home that night?



1           A     I wasn't aware of her arrangement of getting  
2 home. No.

3           Q     Okay. So she leaves and she goes back to the  
4 house; is that right?

5           A     Correct.

6           Q     And, in relation to when you left, had she  
7 already gone back inside the house? Did you see her go  
8 in the house?

9           A     I did not watch her go back inside, no.

10          Q     And, when you are leaving from this house on  
11 Fairview, again, your passenger side is what's most  
12 directly facing the house; is that right?

13          A     Correct.

14          Q     And the vehicle that was in front of you,  
15 that's facing in the same direction; is that correct?

16          A     Correct.

17          Q     So the passenger side of that vehicle would  
18 also be facing towards the house, correct?

19          A     Correct.

20          Q     And, when you pulled away from the curb, do  
21 you recall whether or not you had to sort of back up in  
22 order to pull around it or not?

23          A     I did not have to back up.

24          Q     Now, while you were -- so you just sort of  
25 pull away from the curb; is that correct?

1           A     Correct.

2           Q     So when you're behind this vehicle, did the  
3 vehicle stay sort of stagnant, in the same place, or  
4 did it move or what, if anything, did you observe as  
5 far as that vehicle in front of you?

6           A     It might be guessing at the time, but I would  
7 believe it stayed where it was.

8           Q     So do you recall anything -- so you don't  
9 recall anything specific about that vehicle moving?

10          A     I do not.

11          Q     And, as far as the vehicle, itself, did you  
12 observe anything about sort of the occupants of the  
13 vehicle or anything like that?

14          A     I did not.

15          Q     Now, as you are pulling away from the vehicle,  
16 where was your attention sort of focused as you were  
17 pulling away?

18          A     I believe my side-view mirror and then on the  
19 road.

20          Q     So you're looking in your side-view mirror to  
21 see if there is any other vehicles coming up on your  
22 left, correct?

23          A     Correct.

24          Q     And then you're looking through the windshield  
25 because you're driving a car, correct?

1           A     Correct.

2           Q     At any point in time that you were outside of  
3     that residence at any point, did you observe anybody  
4     get up out of that vehicle or exit that vehicle or go  
5     toward the house from that vehicle or come from the  
6     house toward that vehicle?

7           A     I don't believe so.

8           MR. LALLY: Just one moment, Your Honor?

9           THE COURT: Yes.

10          BY MR. LALLY:

11          Q     Actually, before, let me just ask you a couple  
12     of questions.

13                 MR. LALLY: Your Honor, with the Court's  
14     permission if I could publish just a couple of  
15     photographs for this witness and for the jury?

16                 THE COURT: You may.

17                 MR. LALLY: Ms. Gilman, if I could have  
18     Exhibit No. 71.

19          BY MR. LALLY:

20          Q     Now, sir, I'm going to ask you a couple of  
21     questions about the photograph that's up on the screen.  
22     But, first, what I want to draw your attention to is on  
23     the desk in front of you is a laser pointer. Right  
24     there. Yes. If you would just press that button and  
25     point it in the direction, it will shine green.

1           A     Okay.

2           Q     So with respect to the photograph, Exhibit 71,  
3     that's up on the screen, do you recognize what's  
4     depicted in that photograph?

5           A     34 Fairview.

6           Q     And is that the house of Julie's friend that  
7     you went to potentially go pick her up and eventually  
8     she went back inside?

9           A     Correct.

10          Q     And, within this particular photograph, do you  
11     see the area where you had parked your truck during  
12     this time that you were talking about in your  
13     testimony?

14          A     I do.

15          Q     And, if you could, using that laser pointer,  
16     just direct the jury's attention to where in the  
17     photograph that is?

18          A     Right in front of the driveway. Right there  
19     (indicating).

20          Q     Now, also within this photograph, do you see  
21     the general area where you observed that SUV in front  
22     of you while you were out in front of the house?

23          A     I would say -- if I had to guess, I would say  
24     maybe half of the vehicle.

25          Q     So probably a little bit further towards the

1 left of this photograph, correct?

2 A Correct.

3 MR. LALLY: Ms. Gilman, if I could have  
4 Exhibit No. 72?

5 BY MR. LALLY:

6 Q Again, do you recognize what's up on the  
7 screen?

8 A I do.

9 Q And this is the same house that we were  
10 talking about in the last exhibit?

11 A Correct.

12 Q So from this photograph, do you see the area  
13 where you observed the SUV in relation to your truck  
14 that evening as you were parked out in front of the  
15 house?

16 A I believe so, yes.

17 Q And, again, if you could, sir, using the laser  
18 pointer you have before you, direct the jury's  
19 attention to where about that is?

20 A Like right around that, I'd say (indicating).

21 Q Thank you, sir.

22 MR. LALLY: Ms. Gilman, you can take that  
23 down. Thank you very much.

24 Just one moment, Your Honor?

25 THE COURT: Okay.

1 MR. LALLY: Thank you, sir. Nothing further  
2 for this witness, Your Honor.

3 THE COURT: All right. Cross-examination?

4 MR. YANNETTI: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. YANNETTI:

7 Q Good afternoon, sir.

8 A Good afternoon.

9 Q So you were driving the vehicle that arrived  
10 at 34 Fairview to pick up Ryan Nagel's sister, Julie,  
11 correct?

12 A Correct.

13 Q And you had met Julie prior to that date,  
14 obviously, correct?

15 A Correct.

16 Q You had been over to the Nagel home several  
17 times since the two of you had met years and years ago,  
18 correct?

19 A Correct.

20 Q This was your best friend's sister, correct?

21 A Correct.

22 Q Do you recall about what time it was that you  
23 got there?

24 A Not the exact time.

25 Q Approximate?

1 A I would say around midnight.

2 Q And you now know as you testify here today  
3 that you were outside the residence in back of a black  
4 SUV that was driven by Karen Read, correct?

5 A I do not know that based off of my knowledge.

6 Q Not your personal knowledge but you now know  
7 it's pretty much common knowledge, correct?

8 A I guess so.

9 Q And, in fact, that black SUV was parked  
10 directly in front of yours, in front of the front lawn  
11 of 34 Fairview Road, correct?

12 A Correct.

13 Q And, while you were there, you never observed  
14 that black SUV strike anyone, correct?

15 A Correct.

16 Q You never heard any arguing outside of the  
17 residence of 34 Fairview, correct?

18 A Correct.

19 Q And possessing that information as you did on  
20 January 29th, were you interviewed by any state police  
21 investigator regarding this case on January 29th?

22 A On that day?

23 Q Right.

24 A No.

25 Q What about the next day or the rest of January

1 or any day in February of 2022? Did the state police  
2 come to interview you about the information that you  
3 had as the driver of that vehicle?

4 A No.

5 Q In fact, isn't it true that no investigator  
6 from the step or the district attorney's office  
7 interviewed you anytime during the entire year of 2022?

8 A Correct.

9 Q And that the first time you spoke to any  
10 official, it was not from the district attorney's  
11 office and not from the defense in this case, correct?

12 MR. LALLY: Objection.

13 THE COURT: Sustained. You can word this  
14 differently, Mr. Yannetti.

15 BY MR. YANNETTI:

16 Q The first time you gave a statement to anyone,  
17 it was not Mr. Lally or the step and it was not the  
18 defense in this case, correct?

19 A Correct.

20 Q And that was on May 16th of 2023?

21 A Which time?

22 Q The first time you gave a statement, sir. May  
23 16th of 2023. Does that sound correct?

24 A Around that time, it would be.

25 Q Okay. And you know today is May 15th of 2024,



1 right?

2 A Yes.

3 Q So just about a year ago was the first time  
4 that you gave any statement about your memory of what  
5 occurred on January 29th of 2022, correct?

6 A Correct.

7 Q And you would agree with me that your memory  
8 of what occurred on January 29th was the freshest when  
9 you got up that day, later that morning, correct?

10 A The next morning after the 29th?

11 Q Yes.

12 A Correct.

13 Q Right. And you'd agree with me that, you  
14 know, your memory would have remained fresh for a  
15 period of time, correct?

16 A Correct.

17 Q And you would agree with me that over time,  
18 your memory becomes less fresh, right?

19 A I would agree.

20 Q And it's not just you; it's everybody,  
21 correct?

22 A Correct.

23 MR. LALLY: Objection.

24 THE COURT: Let's move on from there.

25 MR. YANNETTI: Sure.

1 BY MR. YANNETTI:

2 Q And you were first asked about your memory  
3 about -- well, it was clearly over a year after  
4 January 29th. I suppose maybe about 16 months after  
5 the events that you were asked to describe, right?

6 A Correct.

7 Q And then it was only after you talked to  
8 someone else, again, not the prosecution or the  
9 defense, that you --

10 MR. LALLY: Objection, Your Honor.

11 THE COURT: Mr. Yannetti, why don't I see you  
12 at sidebar.

13 (Whereupon, there was a sidebar conference as  
14 follows:)

15 THE COURT: What is the objection?

16 MR. LALLY: I mean, I think Mr. Yannetti has  
17 danced around it. But, at this point, I don't know  
18 -- I think the point has been made. So asking  
19 anymore questions about this particular topic I  
20 think is going to end up eliciting a response  
21 similar to Mr. Nagel's response. We are just going  
22 to get into an area that's prohibited.

23 THE COURT: Can you say "proceeding"? I'm  
24 just concerned that --

25 MR. YANNETTI: I know.

1 THE COURT: Just so the record is clear, I do  
2 not say for a second that Mr. Jackson intended to  
3 have that result.

4 MR. LALLY: No. I did not mean that  
5 otherwise.

6 THE COURT: I know you didn't. I just wanted  
7 to --

8 MR. YANNETTI: No. I appreciate that, Your  
9 Honor. So I think we are past -- I'm not talking  
10 about the Feds not because now I'm asking about the  
11 state police. I just -- an interim proceeding, it  
12 actually was not testimony. It was an interview.

13 THE COURT: Right.

14 MR. YANNETTI: So I'm trying to --

15 MR. LALLY: It actually was testimony. He  
16 testified in the Federal Grand Jury.

17 THE COURT: I didn't think you were going  
18 after this testimony. I thought you --

19 MR. YANNETTI: That's right.

20 THE COURT: So I didn't understand what you're  
21 doing. I thought you were talking about a report.

22 MR. YANNETTI: It was. It was a report. All  
23 I'm after right now is that he talked to the state  
24 police in September. So I'm not asking him about  
25 anything to do with any other agency, just playing

1 off of the first time they talked to him was in  
2 September. So I don't think there is a danger of  
3 -- or anything else at this point. I'm leading him  
4 and I'm going to say it was the state police in  
5 September. I think he will agree with that.

6 THE COURT: Okay. I'd just ask you for  
7 caution. I didn't understand where you were going.  
8 I thought it was a report, but I knew he testified  
9 at the Federal Grand Jury.

10 MR. YANNETTI: Right.

11 THE COURT: And if you're asking a report and  
12 he's talking about Federal Grand Jury --

13 MR. YANNETTI: Of course.

14 (Whereupon, the sidebar conference concluded.)

15 BY MR. YANNETTI:

16 Q I was just going to ask you, the first time  
17 that you were approached by the state police regarding  
18 this case was September 2nd of 2023, correct?

19 A Around that time.

20 Q Right. And that would have been five months  
21 after the first time you were approached, and it would  
22 have been about 21 months after January 29th of 2022?

23 A Correct.

24 Q All right. Now, you drove your own Ford F-150  
25 to 34 Fairview, correct?

1 A Correct.

2 Q And the plan was, again, to pick up Brian's  
3 sister, Julie, correct?

4 A Correct.

5 Q And the entire time you were in the car from  
6 when you left to go to 34 Fairview until you're now  
7 leaving 34 Fairview to go home, that driving  
8 arrangement was the same; in other words, you in the  
9 driver's seat, Ryan in the front passenger seat and  
10 Heather in the back, correct?

11 A Correct.

12 Q Do you recall whether Heather was behind the  
13 passenger, Ryan, when she was sitting in the back?

14 A I do not recall that.

15 Q So you don't recall where she was in that back  
16 cab?

17 A No.

18 Q You do recall that when -- well, strike that.

19 As you're approaching the residence, you don't  
20 have a memory of coming face to face with the black SUV  
21 or any other vehicle, correct?

22 A Correct.

23 Q You're not saying it didn't happen. You just  
24 don't recall that, correct?

25 Q Correct.

1           Q     In any case, your memory, your best memory, is  
2     that when you got there, the black SUV -- and, by the  
3     way, I don't want to put words in your mouth. Do you  
4     recall it as a black SUV or --

5           A     I do.

6           Q     Okay. When you got there, your best memory is  
7     that the black SUV was already parked outside the  
8     residence, correct?

9           A     Correct.

10          Q     And it was facing in the same direction that  
11     you were facing as you approached the residence?

12          A     Yes.

13          Q     Which means -- and you're from Canton,  
14     correct?

15          A     Correct.

16          Q     You came from the Cedarcrest side, and you  
17     were facing toward the Chapman Street side, correct?

18          A     Correct.

19          Q     The same with the black SUV?

20          A     Correct.

21          Q     And it appeared to be parked properly next to  
22     the property, correct?

23          A     Mine?

24          Q     No. The black SUV.

25          A     Yeah.

1 Q It wasn't parked at some crazy angle, correct?

2 A Correct.

3 Q It didn't appear to have struck anything on  
4 the side of the road when it was parked, right?

5 A Correct.

6 Q There was nothing unusual about the way it was  
7 parked?

8 A No.

9 Q And, when it was parked out there and you  
10 approached the residence, is it fair to say that there  
11 was far less snow on the ground than what we saw in  
12 Exhibits 71 and 72 that were shown to you by Mr. Lally  
13 on direct examination?

14 A Correct.

15 Q Those photographs appear to have been taken  
16 after the snowstorm at some point?

17 A I would assume, yes.

18 Q Because there is a decent amount of snow on  
19 the ground there, correct?

20 A Correct.

21 Q But, as you're pulling up to the house, it had  
22 only started snowing around that time?

23 A I would say there was a dusting.

24 Q A dusting?

25 A On the lawn. Yeah.

1 Q So it was starting to accumulate but there  
2 weren't inches and inches of snow, correct?

3 A Correct.

4 Q And your best memory is that the SUV was about  
5 20 yards in front of you?

6 A Give or take, yeah.

7 Q In terms of -- just to get your estimation of  
8 what 20 yards is, would it have been farther than where  
9 you are now to where the court officer is standing  
10 behind the jury box, or is that a good approximation?

11 A To the best of my knowledge, I would say maybe  
12 a little further.

13 Q A little further?

14 A Maybe.

15 Q And there was nothing obstructing your view as  
16 you sat in the driver's seat of your Ford F-150 of the  
17 back of that black SUV, correct?

18 A Correct.

19 Q You did not see, for instance, a Jeep with a  
20 snowplow on the front parked in between you?

21 A I did not.

22 Q In fact, you didn't see a Jeep with a snowplow  
23 parked anywhere on the property that you recall,  
24 correct?

25 A To the beset of my knowledge, no.



1           Q     And you didn't see any other vehicles parked  
2 along the property line other than yourself and the  
3 black SUV, correct?

4           A     Correct.

5           Q     When you first pulled up, do you recall if --  
6 and I know these questions are somewhat unfair because  
7 we are talking about two and a half years later. But,  
8 when you first pulled up, do you recall whether the red  
9 taillights of the black SUV were lit up?

10          A     I would say to signal that the car was on,  
11 yes. I don't know if they were brake light or just  
12 normal taillight.

13          Q     Gotcha. Okay. So you're surmising that some  
14 lights had to be on because your memory is that car was  
15 running?

16          A     Correct.

17          Q     And, with regard to the lighting in that area,  
18 did you have your headlights on when you were out  
19 there?

20          A     I believe so. I don't think I would have shut  
21 them off.

22          Q     Right. You would have been driving with your  
23 headlights on as you were going down Cedarcrest and  
24 taking a left onto Fairview, correct?

25          A     Correct.

1 Q And your car was still running when you pulled  
2 up to the house and parked, correct?

3 A Correct.

4 Q And you would have left it running because  
5 your intention was or your expectation was that  
6 Julie Nagel was going to get in your car, correct?

7 A Correct.

8 Q That was the whole reason you were there?

9 A Correct.

10 Q And your expectation was that there didn't  
11 need to be a tremendously long discussion when Julie  
12 came out of the house, right? You expected her to just  
13 jump in the vehicle, correct?

14 A Correct.

15 Q So that's why you say that there would have  
16 been no reason to turn your taillights -- I'm sorry --  
17 your headlights off, correct?

18 A Correct.

19 Q So your headlights being on, they would have  
20 been focused really right on the rear of that black SUV  
21 that was in front of you, correct?

22 A I would assume so, yes.

23 Q Because there was nothing to block your view  
24 of the black SUV, right?

25 A Correct.

1 Q And you did not notice any broken taillight to  
2 that SUV, correct?

3 A To the best of my knowledge, but I didn't  
4 analyze it.

5 Q Sure. It didn't stand out to you to say or to  
6 make a mental note, hey, that taillight is broken,  
7 correct?

8 A Correct.

9 Q And you didn't see any damage at all to the  
10 vehicle that you noticed, correct?

11 A To the best of my knowledge.

12 Q And, with regard to when Julie came out of the  
13 house when you pulled up and parked, you know, sort of  
14 perpendicular to the driveway -- and that's an accurate  
15 way to portray it?

16 A Correct.

17 Q You believe that it took Julie how long to  
18 come out of the house?

19 A I would guess under a minute.

20 Q Under a minute. And then after that under-a-  
21 minute span of time, she then had to walk from the  
22 front door of the house, one of the front doors of the  
23 house, to your vehicle, correct?

24 A Correct.

25 Q And, by the way, did you notice that there

1 were two front doors to the house at that time?

2 A At the time, no.

3 Q Do you recall if she came out the door that  
4 was more in the middle of the house or more over toward  
5 the driveway? Do you have a memory of that?

6 A I don't. I would be guessing if I did.

7 Q Because the snow had started to stick a little  
8 bit, she wasn't running to the vehicle, correct?

9 A I would assume not.

10 Q All right. So it took her some time to get  
11 out of the house and get to the vehicle, correct?

12 A Correct.

13 Q And then there was a conversation about  
14 whether she was going to come with you or not, correct?

15 A Correct.

16 Q That occurred through one of the passenger  
17 windows being open?

18 A Correct.

19 Q And who was involved in that conversation?

20 A I can't remember exactly, but I would assume  
21 maybe me and Ryan.

22 Q Okay. And there was a back and forth about  
23 whether she was going to come or you were going to stay  
24 and go inside, correct?

25 A A back and forth? It was more just did you

1 guys want to come in? No. Not really back and forth.

2 Q Okay. All right. It took a few minutes for  
3 her to decide, well, I'm just going to go back inside  
4 the house?

5 A If that. A minute or two.

6 Q Okay. And from the moment that you parked the  
7 vehicle outside that residence, your initial intention,  
8 it's fair to say, would have been on the front of the  
9 residence to see when Julie was going to come out,  
10 correct?

11 A I don't believe I was looking.

12 Q Okay. Where were you looking when you were  
13 waiting for her? Did you have a phone?

14 A I don't remember exactly, but I had my phone.  
15 I could have looked at it.

16 Q Okay. You could have been like, as many  
17 people do, when you're waiting for somebody, you just  
18 take out your phone and start scrolling on something?

19 MR. LALLY: Objection.

20 THE COURT: Do you know if you were doing  
21 that, sir?

22 THE WITNESS: I can't recall, but I wouldn't  
23 rule it out.

24 BY MR. YANNETTI:

25 Q And, you know, you had mentioned earlier that

1 when I asked you about the damage to the rear of the  
2 vehicle that, you know, your attention wasn't just  
3 focused on studying that vehicle, correct?

4 A Correct.

5 Q And it's fair to say that from the moment that  
6 you pulled up to Julie coming out of the house, to  
7 Julie walking to the car, to the conversation between,  
8 you know, you and Ryan and Julie, you were not  
9 monitoring what was going on inside or outside that  
10 black SUV, correct?

11 A Correct.

12 Q And, during that span of time, again, while  
13 you showed up there, waiting for Julie, she comes out  
14 eventually. She walks to the car. You talk to her.  
15 You were not paying attention to who, if anybody, was  
16 inside the black SUV at that time, correct?

17 A Correct.

18 Q And you were not paying attention to whether  
19 anybody got out of the vehicle at that time, correct?

20 A Correct.

21 Q And then, ultimately, you were going home; the  
22 night was over, correct?

23 A Correct.

24 Q And, in order to go home, your plan was to  
25 keep going up Fairview Road toward Chapman Street,

1 correct?

2 A Correct.

3 Q And, in order to do that, that would have  
4 meant that you passed the black SUV that had been in  
5 front of you, correct?

6 A Correct.

7 Q And, at that time as you're passing the black  
8 SUV, do you recall whether or not there was an interior  
9 light on within the cab of that SUV?

10 A I do not.

11 Q All right. Were you curious at all who was  
12 inside that SUV, given that it pulled up to the same  
13 house that you pulled up to?

14 A Not at all.

15 Q You were concentrating more on the road?

16 A Correct.

17 Q And, as far as you were concerned, your night  
18 was over, time to go home, correct?

19 A Correct.

20 Q All right. But it's fair to say that at no  
21 point in time from the first time you saw that SUV  
22 until you're leaving it did you see anybody in the  
23 front passenger seat of the SUV, correct?

24 A I didn't look inside the SUV.

25 Q Right. So you didn't see anybody in the front

1 passenger seat?

2 A No. I didn't look.

3 Q All right. You also didn't notice at any  
4 point anybody standing outside that SUV?

5 A Not to my knowledge.

6 Q And you never saw anybody sitting in the snow  
7 or in the street or on the lawn outside the SUV?

8 A Not to my knowledge, no.

9 Q And you never saw anybody lying outside that  
10 SUV; is that fair to say?

11 A Yes.

12 MR. YANNETTI: If I may have a moment?

13 THE COURT: Yes.

14 MR. YANNETTI: No further questions. Thank  
15 you, sir.

16 THE COURT: Anything Mr. Lally?

17 MR. LALLY: Just briefly.

18 REDIRECT EXAMINATION

19 BY MR. LALLY:

20 Q Sir, so from the time that you were in front  
21 of the house until you left, you never saw anyone go in  
22 or out of that house or in and out of that vehicle,  
23 that black SUV in front of you, correct?

24 A Correct.

25 Q Okay. And, while you were not monitoring the



1 activity around the SUV, you never saw anyone around  
2 the SUV, correct?

3 A Correct.

4 Q And fair to say that if a six-foot man had  
5 walked from the SUV to the house, is that something  
6 that you think you would see?

7 MR. YANNETTI: Objection.

8 THE COURT: Sustained.

9 MR. LALLY: Nothing further, Your Honor.

10 THE COURT: You are all set, Mr. D'Antuono.

11 Thank you.

12 THE WITNESS: Thank you.

13 (Whereupon, the witness is excused.)

14 THE COURT: Your next witness, Mr. Lally?

15 MR. LALLY: Yes. The Commonwealth would call

16 Ms. Allison McCabe.

17 Whereupon,

18 ALLISON MC CABE

19 having been first duly sworn, was examined and  
20 testified under oath as follows:

21 THE COURT: Whenever you are ready, Mr. Lally.

22 MR. LALLY: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. LALLY:

25 Q Good afternoon, ma'am.

1 A Good afternoon.

2 Q Could you please state your name and spell  
3 your last name for the jury?

4 A Alli McCabe. M-C-C-A-B-E.

5 Q And where do you live, ma'am?

6 A Canton.

7 Q And how long have you lived in Canton?

8 A Basically my whole life except the first few  
9 months I lived in Stoughton.

10 Q And do you work? Do you go to school?

11 A I'm a student.

12 Q In college; is that correct?

13 A Yes.

14 Q And what year are you in in college?

15 A I just finished my sophomore year.

16 Q And, when living in Canton, who, if anyone, do  
17 you live in Canton with?

18 A My two parents and my three sisters.

19 Q So you're one of four girls; is that correct?

20 A Correct.

21 Q Okay. And are you the oldest?

22 A Yes.

23 Q And their parents, what are their names?

24 A Matt and Jen.

25 Q If I could turn your attention to January

1 28th, into January 29th of 2022, do you recall those  
2 days?

3 A Yes.

4 Q And do you recall what days of the week those  
5 were?

6 A Friday and Saturday, I believe.

7 Q And so on that Friday evening, starting with  
8 there -- well, let me ask you this first: At that  
9 time, you were a high school student; is that correct?

10 A Correct.

11 Q And where did you go to high school?

12 A Canton High School.

13 Q All four years?

14 A Yes.

15 Q And did you play any sports when you were at  
16 Canton High School?

17 A Yes.

18 Q And what sports did you play?

19 A Soccer, hockey and lacrosse.

20 Q And so January, that would have been which  
21 sports season?

22 A Hockey season.

23 Q Now, with respect to the hockey, as far as  
24 that evening of the 28th, how did your evening start  
25 out or what, if anything, were you doing first that

1 evening?

2 A It started with a team dinner at my house.  
3 The hockey team came over. We had dinner. Then I went  
4 to my sister's basketball game at Canton High School.  
5 Then I was hanging out with two of my friends. We  
6 were driving around. Then night ended with me driving  
7 Colin Albert home.

8 Q And so let me start sort of back at the  
9 beginning before we go all the way through.

10 So as far as the team dinner, is that  
11 something that was like a weekly thing?

12 A Yeah. It was usually like the night before a  
13 game.

14 Q And it sort of rotated between different  
15 players' houses?

16 A Correct.

17 Q And so where was it on that particular Friday?

18 A That night it was at my house.

19 Q And about what time did the team dinner get  
20 done or what time did that wind down and you went to  
21 the basketball game?

22 A I'm not sure. The basketball games typically  
23 start around 6:30. So I assume around then.

24 Q And who, if anyone, from your family was  
25 involved in the basketball game?

1           A     My younger sister.

2           Q     And was she JV, varsity? What was she playing  
3 on at that time?

4           A     Varsity.

5           Q     Varsity. And who, if anyone else, from your  
6 family was at the basketball game?

7           A     My parents. I'm not sure about my sisters.

8           Q     And did you go with your parents or separately  
9 or how did you get there?

10          A     I believe I drove and I arrived later than my  
11 parents.

12          Q     And, as far as at that time, did you have your  
13 own car?

14          A     Yes.

15          Q     Okay. And what kind of car did you have?

16          A     A little Ford Fusion, blue.

17          Q     And, when you arrived there -- you're a high  
18 school senior, correct?

19          A     Correct.

20          Q     Did you sit with your parents during the game?

21          A     No.

22          Q     There's sort of like a student section;  
23 correct?

24          A     Correct.

25          Q     Okay. And so you sat there with your friends?

1 A Yes.

2 Q And, when the game gets over, where was it  
3 that you went from there?

4 A I believe I was just driving around with two  
5 of my friends and then we -- as we were driving, we  
6 came across a dog on the side of the street. And we  
7 knew a snowstorm was coming. So we picked the dog up  
8 and then brought it to the police station and then  
9 drove the dog back to its owner's house.

10 Q As far as the friends that you were driving  
11 around with, what are their names?

12 A Avery Piantedosi and Danielle Seaman.

13 THE COURT: Would you do us a favor and spell  
14 those last names for the court reporter, please?

15 THE WITNESS: Yes. P-I-A-N-T-E-D-O-S-I.

16 THE COURT REPORTER: And the second name?

17 THE WITNESS: Danielle Seaman, S-E-A-M-A-N.

18 THE COURT REPORTER: Thank you.

19 BY MR. LALLY:

20 Q And those were friends of yours from school,  
21 from Canton High School, as well?

22 A Yes.

23 Q And had they been with you at the game  
24 previously?

25 A Yes. I believe so.

1           Q     When you say "drove around," whereabouts were  
2 you driving?

3           A     Through Canton, pretty aimlessly.

4           Q     And at some point you come upon a dog; is that  
5 correct?

6           A     Correct.

7           Q     And where was that?

8           A     On Elm Street.

9           Q     This is a dog, obviously, unfamiliar to you;  
10 is that correct?

11          A     Yes.

12          Q     So what did you do with the dog?

13          A     The dog ran over to the car when we stopped.  
14 And we picked the dog up. And we really didn't know  
15 what to do with it. So we brought it to the police  
16 station.

17          Q     And do you recall at all what kind of dog it  
18 was?

19          A     No. White.

20          Q     Big dog? Small dog?

21          A     It was small. He was white and brown. I'm  
22 not sure what type.

23          Q     And so while you are at the police station,  
24 what, if anything, did you learn about that dog that  
25 you had brought to the police station?

1           A     I brought the -- or I went in the police  
2 station. The dog stayed in the car with one of my  
3 friends. And, as I was walking in and telling the  
4 officer that I found a dog, he got a call from the  
5 owner. And she asked if -- she was like, oh, can you  
6 return my dog, please.

7           Q     So you brought the dog back to the owner?

8           A     Yes.

9           Q     Do you know about what time all of that was  
10 going on?

11          A     I'm not sure.

12          Q     Now, you mentioned that you had picked up a  
13 person by the name of Colin Albert; is that right?

14          A     Correct.

15          Q     Okay. And who is Colin Albert to you or could  
16 you describe to the jury sort of your relationship with  
17 Colin?

18          A     I've known Colin since I've been born. Our  
19 families are very close. We went to high school  
20 together, school together growing up, in the same  
21 friend group. So we're very close.

22          Q     So he was in the same grade as you; is that  
23 right?

24          A     Correct.

25          Q     Okay. So he was a senior at this time, as



1 well?

2 A Yes.

3 Q Okay. And you have friends, mutual friends  
4 together?

5 A Yes.

6 Q Now, the two of you are not actually sort of  
7 blood related; is that correct?

8 A Correct.

9 Q But you have sort of relatives in common; is  
10 that correct?

11 A Yes.

12 Q And to that point, as far as when he reached  
13 out to you -- well, let me ask you this: How is it  
14 that you came to come by and sort of pick him up on  
15 that evening?

16 A He texted me and was asking for a ride. And  
17 then I responded, drove, got him, texted him when I  
18 arrived.

19 Q Now, as far as that sort of -- I don't know  
20 what exactly to call it. But, as far as you picking  
21 him up at certain places like on weekend nights, was  
22 that out of the realm of normalcy or was that something  
23 that happened on occasion?

24 A No. That's common. He knew I was driving  
25 that night. So its pretty common. Our friends, we

1 always just drive each other around and stuff.

2 Q Okay. And, without getting too much into it  
3 as far as high school was concerned, particularly when  
4 someone was drinking, would they call and ask for a  
5 ride?

6 A Correct. Yes.

7 Q Rather than drive their own car?

8 A Yes.

9 Q And, as far as you knew, was Colin drinking at  
10 least at some point during that evening?

11 A Yes.

12 Q And is that why he needed a ride?

13 A Yes.

14 Q Okay. And, with respect to your parents, did  
15 you -- around this time that you're driving around and  
16 you're going to pick up Colin, did you have any idea  
17 where your parents were or what they were doing?

18 A I knew they were going out after the  
19 basketball game. But, no, I didn't know. I have their  
20 Life360. They have mine. I wasn't sure, though.

21 Q And, as far as the Life360 goes, is that  
22 something that you sort of keep track of them or they  
23 keep track of you?

24 A It's more them keeping track of me.

25 Q Now, do you know approximately what time it

1 was that you first get sort of -- Colin reaches out via  
2 text to pick him up?

3 A I believe it was around midnight. I'm not  
4 sure exactly but around midnight.

5 Q And did you know where he was when he asked  
6 you to pick him up?

7 A Yes. The Alberts' house, 34 Fairview.

8 Q And is that a house that you are familiar  
9 with?

10 A Yes.

11 Q Okay. And what, if any, relationship do you  
12 have to the people that live at the Alberts' house?

13 A My aunt and uncle and my cousins.

14 Q So Brian Albert is your uncle, correct?

15 A Correct.

16 Q Nicole Albert is your aunt?

17 A Correct.

18 Q And how was she your aunt? Your father's  
19 side, your mother's side?

20 A My mother's sister.

21 Q And Colin Albert, obviously last name Albert,  
22 he's related to people at Fairview, as well?

23 A Correct.

24 Q Okay. But sort of on the other side of the  
25 family?

1           A     Correct.

2           Q     And do you know what -- as far as your  
3 conversation with Colin, do you know why he was over at  
4 that house that night?

5           A     It was Brian, Little Brian's birthday.

6           Q     And so he had gone over for that purpose, and  
7 you went by to pick him up?

8           A     Yes.

9           Q     Do you recall where you were or sort of who  
10 you were with when you first get that text or  
11 communication from Colin to pick him up?

12          A     Yes. I was at another friend's house. After  
13 I drove Avery and Danielle home, I went somewhere else.

14          Q     So you drove the two friends that you were  
15 with earlier home and then you went somewhere else?

16          A     Yes.

17          Q     And, at that point, did you get a text from  
18 Colin?

19          A     Yes.

20          Q     Now, do you recall whether or not the  
21 information you had as to where Colin was that night,  
22 is that something that came via text, as well, or was  
23 that a phone call or some other type of communication?

24          A     I knew he was there. It could have been a  
25 phone call. I'm not sure.

1 Q So were there a variety of different ways that  
2 you would have communicated with Colin around that  
3 time?

4 A Yes. There's other apps, as well.

5 Q I'm sorry. You said through apps, as well?

6 A Yes.

7 Q And what kind of apps were those?

8 A For example, like Snapchat.

9 Q So you had each other's sort of Snapchat  
10 information, phone number information, call, text,  
11 Snap. It could have been any of those three?

12 A Yes.

13 Q Okay. Now, when you get that communication  
14 from him to come pick him up, about how long a period  
15 of time was it from the time that you get the text from  
16 Colin to the time that you arrive in the area of  
17 Fairview?

18 A I'm not sure.

19 Q And you're familiar with that home at 34  
20 Fairview, right?

21 A Correct.

22 Q It's a place you've been to countless times  
23 before as you're related to the people that own it?

24 A Correct.

25 Q And do you recall from where you were coming

1 from as far as how did you come to Fairview? Would  
2 that have been on the Chapman side or the Cedarcrest  
3 side or how did you come there?

4 A I don't remember.

5 Q And, when you get to the home, you obviously  
6 park at some point, correct?

7 A Correct.

8 Q And where in relation to the house did you  
9 park?

10 A I believe in the driveway on the left side.  
11 I'm not entirely sure. I just believe that.

12 Q Okay. And, when you arrive, what, if any,  
13 communication did you send to Colin?

14 A I texted him, saying, here.

15 Q And, after you texted that to Colin, he comes  
16 out of the house; is that correct?

17 A Correct.

18 Q And, when he comes out of the house, about how  
19 long a period of time was it from the time that you  
20 texted him here to the time that he comes out to the  
21 car?

22 A I'm not sure. A few minutes.

23 Q And, in the area around the time that you  
24 arrive on Fairview Road, what, if anything, do you  
25 recall in regard to the weather or what was it doing at

1       that point?

2           A     I believe it was starting to snow.  Nothing  
3       crazy.

4           Q     As far as accumulation, what, if anything, did  
5       you observe at that time?

6           A     Lights on in the house.  That's it.

7           Q     As far as the snow was concerned, was it  
8       starting to sort of stick to the ground?

9           A     I don't remember.

10          Q     So you text Colin shortly thereafter.  He  
11       comes out; is that right?

12          A     Correct.

13          Q     And do you recall -- you're familiar,  
14       obviously, as I've asked you a couple of times now with  
15       the house, there are two doors in the front of the  
16       house; is that right?

17          A     Yes.

18          Q     Do you know which are the two doors Colin came  
19       out of?

20          A     No.  I'm not sure.

21          Q     Okay.  And, when he came down, he came over to  
22       the car, correct?

23          A     Yes.

24          Q     And you're in the driveway?

25          A     Yes.

1           Q     And he gets into what part of the car? The  
2 front passenger seat?

3           A     Yes.

4           Q     And, from the time that you -- so when you  
5 leave from there, where is it that you went?

6           A     His house and then my house.

7           Q     So you dropped him off at his house and then  
8 you went home?

9           A     Correct.

10           THE COURT: Mr. Lally, we are actually going  
11 to break here. We have to break a little bit  
12 early, but we'll be back at 2:00.

13           I'll ask you to sit in your seat and let the  
14 jurors go out first.

15           THE WITNESS: Thank you.

16           (Whereupon, the jury is escorted from the courtroom  
17 and the luncheon recess is taken.)

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A F T E R N O O N   S E S S I O N

(Court resumes at 2:03 p.m.)

(Defendant present. Jury present.)

THE COURT: All right. Could we have  
Ms. McCabe, please?

THE CLERK: I remind you, ma'am, you are still  
under oath.

THE COURT: All right. Mr. Lally, whenever  
you're ready.

MR. LALLY: Thank you, Your Honor.

BY MR. LALLY:

Q Now, Ms. McCabe, if I could take you back just  
to a little bit from where we had left off.

When you arrive at the residence at 34  
Fairview Road, you pulled into the driveway; is that  
correct?

A I believe so.

Q And, obviously, on that date, you were  
familiar with the types of vehicles that your parents  
drove?

A Yes.

Q And did you see any of your parents' vehicles  
at the home when you pulled in and parked in the  
driveway?

A No.

1 Q And, when you got to the house, at any point  
2 did you exit the car or go inside the house?

3 A No.

4 Q So you texted him that you were there, and you  
5 stayed in the car and he came out?

6 A Yes.

7 Q And when Colin came out to the car, what, if  
8 any, observations did you make of him in regard to his  
9 sobriety, as far as what, if any, observations did you  
10 make with respect to that?

11 A Normal.

12 Q He didn't seem overly intoxicated to you?

13 A No.

14 Q And, as far as his face or features or from  
15 whatever you could see, what, if any, injuries did you  
16 observe on Colin when he came out?

17 A None.

18 Q And how would you describe his demeanor when  
19 he came out and he got into the car?

20 A Normal.

21 Q Now, during the course -- you drove from the  
22 Fairview home to Colin's house; is that right?

23 A Yes.

24 Q And where was Colin living at that point?

25 A I don't know the address, but his new house,

1 not the old -- not the one where he was neighbors with  
2 John. The newer house.

3 Q And, if you could, just generally speaking,  
4 where was that in relation to the town of Canton? What  
5 was it near?

6 A It's in the center of town, close to the  
7 library.

8 Q And do you recall or do you know what type of  
9 residence that is?

10 A Yes. It's like condos. I'm not sure exactly,  
11 but yeah.

12 Q As far as your drive from the residence in  
13 Fairview to Colin's house, did you make any stops along  
14 the way?

15 A No.

16 Q And about how long a drive is it from Fairview  
17 to Colin's new house?

18 A Seven minutes. Five minutes.

19 Q And, when you arrived there, what did you  
20 observe Colin to do?

21 A Got out of the car, went inside -- got the key  
22 and went inside.

23 Q And is that something as far as did you wait  
24 for him to get inside?

25 A Yes.

1 Q And why was that?

2 A I always wait for him because he has to open  
3 the first door to get inside. So I usually just wait  
4 for everyone to get inside.

5 Q And during the car ride from Fairview to  
6 Colin's house, do you recall anything specific about  
7 -- did you have a conversation with him?

8 A Probably. I don't remember what we were  
9 talking about.

10 Q And then following that, where did you go?

11 A I went home.

12 Q And, when you got home, were either of your  
13 parents home at that point?

14 A No.

15 Q And do you know about what time it was that  
16 you got home?

17 A Not exactly. I would estimate a little bit  
18 before 12:30. Around that time.

19 Q And at any point in time over the rest of the  
20 course of that evening, did you see your parents? Did  
21 you talk to your parents or anything like that?

22 A I know I talked to my dad on the phone when we  
23 found the dog. Other than that, no.

24 Q And so after your return home when you went to  
25 bed or you went to sleep, were your parents home at

1 that point?

2 A No.

3 Q And about how much time was it between the  
4 time when you got home around 12:30 or so and when you  
5 went to sleep?

6 A Not long. I don't know.

7 Q Now, turning your attention to the following  
8 day, at some point you woke up, correct?

9 A Yes.

10 Q And were your parents home at that point?

11 A Yes.

12 Q And were both of your parents home at that  
13 point?

14 A Yes.

15 Q And do you know about what time it was that  
16 you woke up the next morning?

17 A No, I do not.

18 Q Now, Ms. McCabe, at some point in August of  
19 2023, did you have occasion to meet with some troopers  
20 from the state police?

21 A Yes. I'm not sure what time but on a Zoom.

22 Q And was that one trooper or more than one  
23 trooper or something else?

24 A I believe two. I'm not sure.

25 Q And do you recall any of the names of any of

1 those troopers?

2 A Yuri maybe was one of them. I'm not sure.

3 Q I'm sorry. I'm just going to wait for the  
4 truck to go by.

5 Now, ma'am, following that meeting that you  
6 had with the troopers from the state police, what, if  
7 anything, did you provide to them from your phone?

8 A Text messages with Colin, maybe pictures. I  
9 don't know. Definitely the text messages.

10 Q And, before we get to that, just as far as  
11 your phone, what kind of phone did you have at that  
12 time, if you know?

13 A I believe an iPhone 14 Pro Max, maybe.

14 Q I should have been more specific as far as a  
15 time. But the iPhone you're talking about as far as  
16 the Pro Max, was that in January of 2022 or August of  
17 2023?

18 A That was in August.

19 Q And, between January 2022 and August of 2023,  
20 did you have the same phone throughout that time  
21 period?

22 A I'm not sure. I believe I upgraded. Yeah.

23 Q And, when you upgraded your phone, what, if  
24 any, data sort of carried over from the old phone to  
25 the new phone, if you know?

1 A Everything.

2 Q So as far as chats or text messages or phone  
3 contacts, things like that, all of that transferred  
4 from one phone to the new phone?

5 A Correct.

6 MR. LALLY: Your Honor, may I approach?

7 THE COURT: Yes.

8 BY MR. LALLY:

9 Q So first, ma'am, I'm going to show you a two-  
10 page document and ask you to take a look at it and look  
11 up when you're done.

12 A Yes.

13 Q And do you recognize that, ma'am?

14 A Yes.

15 Q What do you recognize that to be?

16 A This is from my phone and my text messages.

17 Q And the second page? What is that?

18 A Colin's contact information.

19 Q Are those screenshots that you took from your  
20 phone and provided to the troopers in August in 2023?

21 A Uh-huh. Yes.

22 MR. LALLY: May I approach again, Your Honor?

23 THE COURT: Yes.

24 MR. LALLY: The Commonwealth would seek to  
25 introduce and admit as --

1 MR. YANNETTI: Objection. I'd ask to be  
2 heard.

3 THE COURT: Okay. Come on up.  
4 (Whereupon, there was a sidebar conference as  
5 follows:)

6 MR. YANNETTI: Your Honor, I'm objecting on  
7 multiple grounds. One is that this is rank  
8 hearsay. It's being offered for the truth of the  
9 matter asserted.

10 Secondly and equally important is that these  
11 screenshots are unreliable. We don't know that  
12 they are what they purport to be. In other words,  
13 there are times listed there but, again, being  
14 offered for the truth of the matter asserted, which  
15 by an iPhone can be changed very easily by going  
16 into settings.

17 So we don't have a forensic extraction of the  
18 phone. The police did not ask to actually take her  
19 phone and confirm that those times are actually  
20 accurate. They chose not to do that. And, given  
21 that her phone is gone now, they robbed us of any  
22 ability to challenge those times through forensic  
23 methods. So I believe these are inadmissible in  
24 the form that they are in.

25 If the Court is inclined to overrule my



1 objection, I would ask for a voir dire to be done  
2 before these are admitted.

3 THE COURT: Okay. What do you say, Mr. Lally?

4 MR. LALLY: Your Honor, what I say is that the  
5 witness on the stand is a participant in the  
6 conversations and can authenticate those  
7 conversations under *Purdy*.

8 Secondly, I would say as far as any questions  
9 that counsel has to them go to the weight and not  
10 the admissibility.

11 THE COURT: How long of a voir dire do you  
12 need?

13 MR. YANNETTI: Ten, fifteen minutes.

14 THE COURT: All right. I'll give you a short  
15 voir dire.

16 MR. LALLY: Your Honor, if I may, just for the  
17 sake of not coming back up --

18 THE COURT: Yes.

19 MR. LALLY: -- I also intend to introduce  
20 those two. They are also screenshots that she took  
21 for photographs of Colin Albert from February 11th.  
22 Essentially, what these are is two separate  
23 photographs from the defense that show the Alberts'  
24 home. She was present during this event. So she  
25 can authenticate that's what Colin Albert looked

1           like on February --

2           THE COURT: Who is the one --

3           MR. LALLY: That's Nicole Albert.

4           THE COURT: All right. So we will have a voir  
5           dire on it.

6           THE COURT: Jurors, I'm going to ask you to  
7           step out for just a few minutes.

8           (Whereupon, the sidebar conference concluded and  
9           the jury is escorted from the courtroom for a brief  
10          recess.)

11          THE COURT: Madam Court Reporter, would you  
12          please mark that for identification.

13          MR. YANNETTI: Your Honor, may I be excused  
14          for one second just to pick up something in the  
15          hallway?

16          THE COURT: Okay.  
17          (Whereupon, screenshots of texts were entered and  
18          marked Exhibit "AA" for Identification.)

19          THE COURT REPORTER: "AA" for identification,  
20          Your Honor.

21          THE COURT: Thank you. And the next two, if  
22          they would be marked separately, please.

23          (Whereupon, photograph was entered and marked  
24          Exhibit "BB" for Identification.)

25          (Whereupon, photograph was entered and marked

1 Exhibit "CC" for Identification.)

2 THE COURT REPORTER: "BB" and "CC."

3 THE COURT: Thank you.

4 The lawyers are going to get to ask you a few  
5 questions now before we go any further in front of  
6 the jury.

7 THE WITNESS: Okay.

8 THE COURT: So, Mr. Lally, you can take the  
9 exhibits back and you can question this witness,  
10 and then Mr. Yannetti can cross her.

11 MR. LALLY: May I approach?

12 THE COURT: Yes.

13 VOIR DIRE EXAMINATION

14 BY MR. LALLY:

15 Q So, Ms. McCabe, with reference to the two  
16 screenshots that we were just talking about before the  
17 jury left the room, those are screenshots that you took  
18 from your own phone, correct?

19 A Correct.

20 Q And, as far as the communications contained  
21 therein, is it your memory that those are  
22 communications that you had with Colin Albert --

23 THE COURT: Why don't you ask her what they  
24 are and not lead.

25 MR. LALLY: Sure.

1 BY MR. LALLY:

2 Q Those screenshots as far as the  
3 communications, what are they, when were they done?

4 A On a later date. Is that what you're asking?  
5 Sorry.

6 Q So I'm asking as far as the actual content of  
7 the conversations, when did those conversations occur?

8 A January 28th.

9 Q And you were a participant in those  
10 conversations?

11 A Yes.

12 Q And, as far as the content of those  
13 conversations, is it your memory that the content  
14 reflected there is accurate as to what the content of  
15 the conversations were between yourself and Colin  
16 Albert the evening of the 28th, into the 29th?

17 A Yes.

18 Q And Colin Albert was somebody that you were  
19 familiar with, correct?

20 A Yes.

21 Q And beyond what's contained within these  
22 screenshots, you had had other text communications with  
23 Colin Albert using the same contact information?

24 A Correct.

25 Q And how is it that you knew or were aware that

1 the person or the contact that you were talking to was  
2 Colin Albert? Let me ask you this.

3 A His phone?

4 Q With reference to that contact you had in your  
5 phone for Colin Albert, had you called that number  
6 before?

7 A Yes.

8 Q And, when you called the number, who answered?

9 A Colin.

10 Q And, when you had texted Colin on prior  
11 occasions using that contact information, did you have  
12 any -- you have a text communication. Did you have any  
13 subsequent conversation in relation to the content of  
14 those text communications?

15 A Sorry. Can you rephrase that?

16 Q Sure. And I'm not just asking specifically  
17 about these. What I'm saying is you had contact  
18 information in your phone for Colin Albert, correct?

19 A Yes.

20 Q And, on any of those prior occasions when  
21 you had texted that contact information you put in as  
22 Colin Albert into your phone -- and, just to be clear,  
23 you were the one who input that number as Colin Albert  
24 in your phone?

25 A Yes.

1 Q And so on this or any prior occasions when you  
2 had contact via text, that contact of Colin Albert in  
3 your phone, following those text communications, did  
4 you have any conversation with Colin Albert relating to  
5 the content of those communications?

6 A Sorry. I'm confused.

7 Q It's my fault. It's not yours.

8 A No. That's fine.

9 THE COURT: Make it simpler. Let's try and  
10 get through this voir dire, Mr. Lally.

11 MR. LALLY: Sure.

12 BY MR. LALLY:

13 Q At some point during the course of your -- how  
14 long had you had Colin's contact information in your  
15 phone?

16 A For awhile. Years.

17 Q And, over the course of those years, had you  
18 had conversations related to content in text in person?

19 A Yes.

20 Q And, as far as the content that you had texted  
21 to that number you associated or input as Colin Albert,  
22 was Colin Albert aware of the content of those text  
23 communications?

24 A Correct. Yes.

25 Q Okay. And, within the specific screenshot of

1 the text communications from that evening, as far as  
2 your recollection of that particular evening are the  
3 times that are associated with those accurate as far as  
4 your memory?

5 A Yes.

6 Q And did you do anything to alter the times  
7 that are associated with those text communications  
8 prior to taking a screenshot and giving it to the state  
9 police?

10 A No.

11 Q Now, turning to the other two screen shots  
12 that you took, those are photographs, correct?

13 A Did I take them?

14 Q I'm just asking what they are.

15 A Oh. Picture of -- both pictures of Colin.  
16 One is with my aunt. The other is just him and some  
17 other people blocked off.

18 Q And do you know when and where those were  
19 taken?

20 A Yes. They were taken at the Alberts' house.  
21 One of their sons were coming home from the Marines.  
22 So it was like a welcome home party.

23 Q And when was that in relation to the evening  
24 of January 28th to 29th?

25 A A few weeks after.

1           Q     And that sort of coming home celebration for  
2 your cousin who is coming home for the Marines, were  
3 you there for that?

4           A     Yes.

5           Q     And so as far as your observation of those  
6 photographs, is what's depicted of Colin Albert, is  
7 that a fair and accurate portrayal of what he looked  
8 like on February 11th?

9           A     Yes.

10           MR. LALLY: I have nothing further.

11           THE COURT: All right. Mr. Yannetti?

12           MR. YANNETTI: Thank you, Your Honor.

13 BY MR. YANNETTI:

14           Q     Good afternoon, ma'am.

15           A     Good afternoon.

16           Q     How long have you had an iPhone? I'm not  
17 talking about your current iPhone but just iPhones in  
18 general.

19           A     For years.

20           Q     More than five years?

21           A     Yes.

22           Q     And how old are you now?

23           A     I'm 20.

24           Q     Twenty. And when did you get your first  
25 iPhone if you remember?



1 A I don't remember.

2 Q Twelve? Thirteen?

3 A Yeah.

4 Q Around there?

5 A Middle school-ish.

6 Q So maybe seven or eight years? Is that a  
7 decent estimate?

8 A Yes.

9 Q And, in those seven or eight years, you have  
10 learned how to operate an iPhone, the various features  
11 that they have and the apps that you can download and  
12 use, correct?

13 A Correct.

14 Q And your current iPhone has a number of apps  
15 on it, correct?

16 A Correct.

17 Q With regard to the text message app, you'll  
18 agree with me that that is a green icon with a white,  
19 sort of speech bubble in the middle of it?

20 A Yes. I believe.

21 Q And you know that when you click on that, it  
22 gives you a list of the text messages that you're  
23 exchanging with people, the various threads, correct?

24 A Correct.

25 Q You know that if you click on a thread, it

1 opens up the individual text messages that you sent and  
2 received to that particular person, correct?

3 A Correct.

4 Q And you know that if you take your finger or  
5 your thumb and you hold it on one particular text  
6 that's either sent to you or from you, you can do  
7 things with that individual text, correct?

8 A Correct.

9 Q You can forward it to somebody else, right?

10 A Correct. I believe.

11 Q In the context of a conversation, you can just  
12 reply to that one particular text message, right?

13 A Correct.

14 Q And, if you do that, rather than hit the arrow  
15 button where you forward or reply, on the left side of  
16 the screen there's a trash can, correct?

17 A I'm not sure.

18 Q You know that you can delete a text from a  
19 thread, correct?

20 A Correct.

21 Q All right. And it is a trash can that you  
22 click on, right?

23 A Correct.

24 Q I'm not trying to trick you.

25 A No, no. I was confused. Sorry.

1 Q No. I understand. I don't mean to confuse  
2 you.

3 So you know that if you click on the trash  
4 can, it gives you an option to either cancel or to  
5 delete the message, correct?

6 A Correct.

7 Q And what happens if you delete the message?

8 A It's deleted off of the phone.

9 Q Okay. So it's gone from that thread, correct?

10 A Correct.

11 Q And somebody looking at a screenshot that you  
12 take after you've deleted that message, it wouldn't be  
13 evident that that message was ever there, correct?

14 A Correct.

15 Q Now, you testified at a hearing in Boston on  
16 August 3rd of 2023, correct?

17 A Correct.

18 Q That was -- we are not with a jury present.  
19 That was a federal grand jury, correct?

20 A Correct.

21 Q And you had, by that point, by August of 2023,  
22 you no longer had the phone that you originally had on  
23 January 29th of '22, correct?

24 A Yes. I believe so.

25 Q You had gotten a new phone in December of

1 2022, correct?

2 A Okay. I'm not sure what time, but --

3 Q Does that sound about right?

4 A Yeah. I got a new phone. I believe I got a  
5 new phone.

6 Q Right. And, actually, the timing is not that  
7 important, just that it was before that grand jury  
8 appearance.

9 A Okay. Yes.

10 Q All right. And what did you do with the old  
11 phone when you got the new phone?

12 A Transferred it. Through iCloud, everything  
13 transfers over.

14 Q Okay. But I'm actually talking about the  
15 hardware, itself, the physical iPhone.

16 A Oh. Sorry. Can you repeat the question?

17 Q Yes. I'm sorry. Not the data on the phone.  
18 I understand that you've testified that you transferred  
19 that to the new phone. But the actual physical phone,  
20 itself, where did that go when you got the new phone?

21 A I'm not sure.

22 Q Would that have been traded in?

23 A Possibly.

24 Q You don't have it now, correct?

25 A I don't think, no.

1 Q And, as of August of 2023, you didn't have it,  
2 either, correct?

3 A Correct.

4 Q Is it fair to say that no investigator from  
5 this case ever asked you for that phone that you had on  
6 January 29th?

7 A Correct.

8 Q They never --

9 THE COURT: Mr. Yannetti, can you just focus  
10 on the voir dire? All that you're doing you can  
11 cross-examine with, but on the voir dire of this.

12 MR. YANNETTI: Sure.

13 THE COURT: I'd just like to get the jurors  
14 back in.

15 MR. YANNETTI: No. I understand, Your Honor.  
16 I understand. I was trying to lay a foundation,  
17 but maybe it's not necessary.

18 BY MR. YANNETTI:

19 Q So with regard to --

20 THE COURT: If you need to do it, go ahead.

21 MR. YANNETTI: I want to accommodate the  
22 Court, Your Honor.

23 BY MR. YANNETTI:

24 Q With regard to the messages that are in a  
25 given thread, right, we've talked about the fact that

1 you are aware that you can reply to them, an individual  
2 message, forward or delete one, correct?

3 A Correct.

4 Q You are also aware that it is possible to  
5 change the timestamp on any individual message,  
6 correct?

7 A No. I'm not aware of that.

8 Q If you go to settings and you go to general  
9 and you go to date and time, first of all, you can  
10 change the time zone of the message. Do you have your  
11 iPhone with you right now?

12 A Not on me.

13 Q It's not on you? And, in addition to being  
14 able to change the time zone, you actually can change  
15 the hour and minute to whatever you want it to be.  
16 Were you aware of that?

17 A No.

18 Q With regard to photos on your phone, you are  
19 aware that you can change the date and time of any  
20 photo in your photo app, correct?

21 A No.

22 Q There is a little -- when you go to your  
23 iPhone, there is a little "i" for information. And all  
24 you need to do -- or I think it's for info or  
25 information. All you need to do is click on that and

1 you get a popup from the bottom that gives you the  
2 choice to alter the date and time. Did you know that?

3 A No.

4 Q Next to that date and time is the word  
5 "adjust." And that's all you have to click on, and you  
6 can change the time from 12:10 a.m. or you can change  
7 it from 12:40 a.m. to 12:10 a.m., or you can change it  
8 from 1:45 to 12:10 a.m., and it's that easy.

9 A Now I know. I didn't know that. I didn't do  
10 that.

11 MR. YANNETTI: If I may have a moment?

12 THE COURT: You may.

13 MR. YANNETTI: That's it for the voir dire,  
14 Your Honor.

15 THE COURT: Okay. So I'm going to allow this  
16 testimony in. Your argument goes to the weight of  
17 the evidence, not its admissibility. But I did,  
18 under *Commonwealth versus Troche*, want to give you  
19 your voir dire. Okay?

20 MR. YANNETTI: I appreciate it, Your Honor.  
21 Thank you, Your Honor.

22 THE COURT: All right. So let's bring the  
23 jurors back in. I'd like to see counsel at sidebar  
24 while they come in. Mr. Lally?

25 (Whereupon, there was a sidebar conference as

1 follows:)

2 THE COURT: So what you did during the voir  
3 dire you can do with this witness. You just taught  
4 her something, I guess, so she said "now I know."  
5 So it's couched in terms of either pre-voir dire or  
6 post-voir dire. That's fine. If it's not,  
7 Mr. Lally is going to get leeway to then say that  
8 you questioned on those things.

9 MR. YANNETTI: Yes. I understand. Of course.  
10 I understand.

11 THE COURT: Okay. All right.

12 MR. YANNETTI: I understand. Thank you.

13 THE COURT: Thank you.

14 (Whereupon, the sidebar conference concluded.)

15 (Whereupon, the jury is escorted into the courtroom  
16 and seated in the jury box.)

17 MR. YANNETTI: Your Honor, I apologize  
18 profusely. I just need one more minute. I am so  
19 sorry. It is completely my fault.

20 (Whereupon, there was a sidebar conference as  
21 follows:)

22 MR. YANNETTI: Your Honor, the only thing I  
23 was going to bring up -- I understand the Court's  
24 ruling. We object but I accept it, obviously.  
25 But, with regard to the photos, Your Honor, there



1 is no need to have that date underneath the photo,  
2 itself.

3 THE COURT: I didn't even notice that it was  
4 on there.

5 MR. YANNETTI: I am just asking that that be  
6 cropped off. If he wants the photo in, she can  
7 testify to the date. That's hearsay. That should  
8 not be part of the photo.

9 THE COURT: Do you care?

10 MR. LALLY: I don't care. But, again, I mean,  
11 she was there for it and can testify to the date  
12 that the photo was taken.

13 MR. YANNETTI: Well, that's what I just said.  
14 As long as it's not on the exhibit, itself.

15 THE COURT: Okay. So we'll remove it from the  
16 exhibit. Is it on a slide that you probably are  
17 going to put up on the screen?

18 MR. LALLY: It is, but I can advise Ms. Gilman  
19 she can put it on on the screen on the laptop and  
20 enlarge it just for the photo and then somehow --

21 MR. YANNETTI: Yes, as long as it's not  
22 visible to the jury and we can redact it afterward.

23 THE COURT: One person at a time. Okay. She  
24 can do that. I'll give you a minute to let her do  
25 that.

1 MR. YANNETTI: Thank you, Your Honor.

2 (Whereupon, the sidebar conference concluded.)

3 THE COURT: Mr. Lally, I have an instruction  
4 to give.

5 MR. LALLY: Yes.

6 THE COURT: Jurors, remember I've told you  
7 this before. Before you consider any electronic  
8 communication in your deliberations, you must find  
9 first that it is more likely true than not that the  
10 person who authored or sent the communication was,  
11 in fact, either Colin Albert or Ms. Alli McCabe.

12 If you do not find it's more likely true than  
13 not that Ms. McCabe or Mr. Albert was the person  
14 who authored or created or transmitted the  
15 electronic communication, then you cannot consider  
16 that communication in your deliberations.

17 With that, Mr. Lally.

18 MR. LALLY: Thank you, Your Honor. And, Your  
19 Honor, the first two pages that's been marked  
20 "AA," the Commonwealth would seek to introduce and  
21 admit as the next exhibit.

22 THE COURT: Okay. Those may be admitted.

23 MR. YANNETTI: Subject to our conversation at  
24 sidebar.

25 THE COURT: Yes.

1 THE COURT REPORTER: Exhibit 81.

2 (Whereupon, screenshots of texts was entered and  
3 marked Exhibit No. 81 in Evidence.)

4 MR. LALLY: And, Your Honor, if I may just  
5 approach to return it to the witness?

6 THE COURT: Sure.

7 BY MR. LALLY:

8 Q Now, Ms. McCabe, with reference to -- well,  
9 before we get into that, you had an iPhone at the time  
10 of January 2022; is that correct?

11 A Correct.

12 Q And, with respect to your friend,  
13 Colin Albert, as far as his contact information within  
14 your phone, who entered that in your phone?

15 A I did.

16 Q And, prior to that date of January 28th, into  
17 the 29th of 2022, had you had phone conversations where  
18 you would sort of press the button to call that number  
19 and it rang, correct?

20 A Correct.

21 Q And who, if anyone, answered the phone when  
22 you contacted that phone number in your phone?

23 A Colin.

24 Q Now, with reference to Colin and the contact  
25 in your phone, had you had prior text communications

1 with Colin using that contact that you put in?

2 A Correct.

3 Q And, outside of those text communications that  
4 you had, did you have sort of physical, in-person  
5 conversations with Colin in regard to content that was  
6 within text messages that you had with that contact?

7 A Yes. I assume so.

8 Q And specifically on that date of January 28th,  
9 into the 29th, when you arrived at the home on Fairview  
10 Road, you texted Colin that you were there?

11 A Yes.

12 Q And, after you texted him that, what, if  
13 anything, happened after that?

14 A He responded, saying, okay. And then he came  
15 out to the car.

16 MR. LALLY: And, Your Honor, if I may, with  
17 the Court's permission just publish the text  
18 communication to the jury on the screen?

19 THE COURT: Yes.

20 MR. LALLY: I'm sorry. Ms. Gilman, if you  
21 could scroll down a bit.

22 BY MR. LALLY:

23 Q Now, what's up on the screen, Ms. McCabe, is  
24 that what you have before you as the exhibit?

25 A Yes.

1 Q And looking at that, there's sort one side has  
2 text and one side has a blue bubble; is that correct?

3 A Yes.

4 Q And, if you know, who was communicating with  
5 who as far as the sort of plain text outside of the --

6 A Colin and I? Is that what you're asking?

7 Q So what I'm asking you is who is the blue  
8 bubble and who is the other?

9 A Oh. Sorry. I'm the blue bubble and he is the  
10 gray/whitish bubble.

11 Q And from sort of the top of what's depicted on  
12 the screen, can you read the text that you received and  
13 the time that you received it?

14 A Yes. 11:54. And then I responded at 11:55.

15 Q And what did Colin say at 11:54?

16 A You can get me now if easier.

17 Q And what did you respond?

18 A Okay. I am driving people home now.

19 Q And what did Colin respond to that and what  
20 time did he respond to it?

21 A He responded, word, get me after.

22 MR. LALLY: And, Ms. Gilman, if you could  
23 scroll down just a bit.

24 Q And, following the "get me after," what, if  
25 any, response did you provide to him?

1 A "KK," okay, and here.

2 Q And the "here" that you texted, what time does  
3 that read on the screenshot?

4 A 12:10 a.m.

5 Q And what, if anything, did Colin respond to  
6 your text of "here"?

7 A He responded at the same time, saying, okay.

8 Q Thank you.

9 MR. LALLY: Ms. Gilman, you can take that  
10 down.

11 May I approach just to retrieve, Your Honor?

12 THE COURT: Yes.

13 BY MR. LALLY:

14 Q So the next two pages, two separate pages,  
15 contain photographs; is that correct?

16 A Yes.

17 Q And do you recognize what's depicted in those  
18 photographs that I've just placed before you?

19 A Yes.

20 Q And what do you recognize those to be?

21 A Colin.

22 Q Well, let me ask you more specifically. So  
23 were these also screenshots that you provided to  
24 troopers of the state police in August of 2023?

25 A Yes. I believe so.

1 Q And, in regard to those two photographs, do  
2 you know when and where those photographs were taken?

3 A They were taken February 11th at the Alberts',  
4 Nicole and Brian's, house.

5 MR. YANNETTI: Objection. I move to strike.

6 THE COURT: No. I'm going to let her testify  
7 when they were taken.

8 BY MR. LALLY:

9 Q And so February 11th of what year, ma'am?

10 A 2022.

11 Q So a few weeks after January 28th, 29th,  
12 correct?

13 A Yes.

14 Q And were you present at the Alberts' house on  
15 the evening of February 11th when they were taken?

16 A Yes.

17 Q And what was the purpose of yourself and/or  
18 Colin or anybody being over at the Alberts' house on  
19 that date?

20 A One of Nicole and Brian's sons was coming home  
21 from the Marines. So there was like a welcome home  
22 party with family and friends.

23 Q And that is your cousin, Jack; is that  
24 correct?

25 A Correct.

1           Q     And, as far as what's contained in those  
2     photographs, is that a fair and accurate portrayal as  
3     far as your memory of what Colin looked like on  
4     February 11th?

5           A     Correct.

6           MR. LALLY: Your Honor, may I approach again?

7           THE COURT: Yes.

8           MR. LALLY: The Commonwealth would seek to  
9     introduce and admit as the next two exhibits.

10          MR. YANNETTI: Again, subject to our  
11     discussion.

12          THE COURT: Sure. Yes. Those are admitted.  
13     (Whereupon, photograph was entered and marked  
14     Exhibit No. 82 in Evidence.)

15     (Whereupon, photograph was entered and marked  
16     Exhibit No. 83 in Evidence.)

17          THE COURT REPORTER: Exhibits 82 and 83.

18     BY MR. LALLY:

19          Q     Ma'am, I'm just returning those to you. And,  
20     first, I would direct your attention to what's been now  
21     marked as Exhibit 82.

22          MR. LALLY: Ms. Gilman, if -- with the Court's  
23     permission, may I publish those to the jury at this  
24     time, as well?

25          THE COURT: Yes.



1 MR. LALLY: Your Honor, may I just have a  
2 moment?

3 THE COURT: Yes.

4 MR. LALLY: Ms. Gilman, if you could, just  
5 enlarge that a bit.

6 BY MR. LALLY:

7 Q Do you recognize what it is now up on the  
8 screen is what you have before you as Exhibit 82?

9 A Yes.

10 Q And, if you could, just describe to the jury  
11 sort of what we are looking in this photograph. Who is  
12 depicted in this photograph?

13 A Colin and my Auntie Coco.

14 Q And your Auntie Coco is also Nicole Albert; is  
15 that correct?

16 A Yes. Nicole.

17 Q And if I could direct your attention to the  
18 next exhibit before you, Exhibit 83.

19 MR. LALLY: And, Ms. Gilman, if you could pull  
20 that up on the screen? And, Ms. Gilman, if you  
21 could enlarge it just a bit.

22 Q And, again, what's up on the screen, is that  
23 what you have before you as Exhibit 83?

24 A Yes.

25 Q And this is the same evening; is that correct?

1 A Correct.

2 Q And do you know where in the house this  
3 photograph was taken?

4 A I believe they call it their library, maybe.  
5 It's the last -- it's the room in the back.

6 Q And, as far as what's contained in this  
7 photograph in reference to your friend, Colin Albert,  
8 as far as his face, his arms, his hands, is that a fair  
9 and accurate portrayal of what he looked like on  
10 February 11th?

11 A Yes.

12 Q Thank you very much.

13 MR. LALLY: Ms. Gilman, you can take that  
14 down.

15 Your Honor, may I approach one more time just  
16 to retrieve?

17 THE COURT: Yes.

18 MR. LALLY: Thank you, ma'am. I have no  
19 further questions, Your Honor.

20 THE COURT: Okay. Mr. Yannetti?

21 MR. YANNETTI: Thank you.

22 CROSS-EXAMINATION

23 BY MR. YANNETTI:

24 Q Good afternoon, ma'am.

25 A Good afternoon.

1 Q Ms. McCabe, you have known Colin Albert your  
2 whole life, correct?

3 A Correct.

4 Q Your mother is Jennifer McCabe?

5 A Correct.

6 Q His mother is Julie Albert?

7 A Correct.

8 Q And her maiden name was Julie Daniels?

9 A Correct.

10 Q Your mother, Jennifer, grew up together with  
11 his mother, Julie, correct?

12 A Correct.

13 Q You and Colin are extremely close, correct?

14 A Yes.

15 Q In fact, you would consider Colin Albert to be  
16 one of your best friends in the world, correct?

17 A Yes. He is one of my best friends.

18 Q Now, you claim that you took a screenshot of a  
19 text conversation that you had with Colin Albert on  
20 January 29th of 2022, correct?

21 A Correct.

22 Q Those were the screen shots that were just  
23 shown to this jury this afternoon, correct?

24 A Correct.

25 Q And you claim that the information on that

1 screenshot actually existed on January 29th, correct?

2 A Correct.

3 Q Did you tell your mother, Jennifer McCabe,  
4 that you had that text conversation with Colin Albert  
5 anytime after January 29th of 2022?

6 MR. LALLY: Objection.

7 THE COURT: Sustained.

8 BY MR. YANNETTI:

9 Q Did you give to your mother, Jennifer McCabe,  
10 a screenshot of that text message conversation?

11 MR. LALLY: Objection.

12 THE COURT: Sustained.

13 BY MR. YANNETTI:

14 Q It's fair to say that on January 29th, 30th,  
15 31st, you did not turn over that screen shot to any law  
16 enforcement official, correct, of 2022?

17 A No. I was never asked.

18 Q No investigator from this case ever asked you  
19 for copies or a copy of that screenshot, of that text  
20 message conversation on January 29th, 30th or 31st,  
21 correct?

22 A Correct.

23 Q They also did not ask you for a copy of that  
24 screenshot through the whole month of February,  
25 correct?

1 A Correct.

2 Q In fact, all of 2022, no investigator ever  
3 approached you to say, can I have a copy of that  
4 screenshot, correct?

5 A Correct.

6 Q And, in addition to that, you never called an  
7 investigator to say, hey, I have a copy of a screenshot  
8 of a text message conversation that I had with  
9 Colin Albert, correct?

10 A No. It wouldn't have been relevant, not that  
11 time.

12 Q Okay.

13 A Because Colin was not at the house and wasn't  
14 introduced as being there until later.

15 Q Okay. So your testimony today that at no time  
16 in the year 2022 did you consider it relevant at all  
17 that you had this screenshot of this text conversation,  
18 correct?

19 A Correct.

20 Q Leaving that screenshot aside -- actually,  
21 before I leave that topic, you didn't turn over that  
22 screenshot of a text message until sometime during the  
23 summer of 2023, correct?

24 A Correct.

25 Q About a year and a half or more after January

1 29th of 2022, correct?

2 A Yes, when I was asked.

3 Q And, by that time, the summer of 2023, you had  
4 already switched phones, correct?

5 A Yes.

6 Q In other words, the iPhone that you had on  
7 January 29th of 2022, you no longer have possession of  
8 that physical phone, correct?

9 A Correct.

10 Q You had a new iPhone, correct?

11 A Correct.

12 Q And you say that you transferred over the data  
13 from the old phone to the new phone, correct?

14 A Correct.

15 Q When did you take that screen shot that was  
16 displayed to the jury today?

17 A I don't remember.

18 Q Was it before or after you got rid of your old  
19 phone?

20 A I don't remember.

21 Q So we don't know if that screen shot was from  
22 your phone that you got in December of 2022 or if it  
23 was from the phone that you had back in January of  
24 2022, correct?

25 A Correct.

1 Q That phone that you got in December of 2022,  
2 it's now May of 2024. Do you still have that same  
3 phone?

4 A The phone -- my old one? Is that --

5 Q No. My question was -- and, again, I'm not  
6 trying to trick you in any way here.

7 The phone that you got in December of 2022,  
8 the new phone at that time, is that your current phone?

9 A Correct.

10 Q Now, before you got rid of the old phone and  
11 got the new one, did any law enforcement officer prior  
12 to that December of 2022 time period, or investigator  
13 from this case ever ask to examine your physical phone,  
14 itself?

15 A No.

16 Q Did they ever say to you, we would like to do  
17 what's called an extraction on your phone?

18 A No.

19 Q And you never gave that phone at any point to  
20 any law enforcement official before you got rid of it,  
21 correct?

22 A Correct.

23 Q And the first time that you mentioned that  
24 text conversation outside your family was August 3rd of  
25 2023, correct?

1 A Correct.

2 Q That was at a proceeding in Boston, correct?

3 A Correct.

4 Q Where neither Mr. Lally or Ms. McLaughlin or  
5 we were there, correct?

6 MR. LALLY: Objection, Your Honor.

7 THE COURT: Move along, Mr. Yannetti.

8 MR. YANNETTI: Yes.

9 BY MR. YANNETTI:

10 Q That proceeding in August of 2023 was less  
11 than a year ago, correct? We are in May of 2024.

12 A Correct.

13 Q And that was a long time after John O'Keefe  
14 was found dead on Brian Albert's lawn, correct?

15 A Correct.

16 Q And that August of 2023 when you're revealing  
17 that text exchange, that was over a year and a half  
18 after January 29th of 2022, correct?

19 A Correct.

20 Q And, leaving aside the screenshot, as of  
21 August 3rd of 2023, no investigator from this case, no  
22 state police officer trooper or anyone from the D.A.'s  
23 office had ever interviewed you, right, prior to August  
24 of 2023?

25 A I talked to the troopers, the state troopers.



1 But I don't know if that was before or after.

2 Q That was on August 25th of 2023, which is  
3 about three weeks after your testimony in the other  
4 proceeding. Does that refresh your memory?

5 A Yes. Then after.

6 Q And, at that point in time on August 25th of  
7 2023, you'll agree with me that you were not  
8 interviewed at a police station or a state police  
9 barracks, correct?

10 A Correct.

11 Q Or the D.A.'s office, correct?

12 A Correct.

13 Q You were interviewed by Zoom, correct?

14 A Correct.

15 Q And you were not alone at that time in your  
16 home, correct?

17 A I'm not sure.

18 Q Your mother, Jennifer McCabe, was present,  
19 okay?

20 A Okay.

21 Q And she was monitoring what was going on in  
22 that interview, correct?

23 MR. LALLY: Objection.

24 THE COURT: Is that true?

25 THE WITNESS: I don't recall.

1 BY MR. YANNETTI:

2 Q In any case, that, too, was over a year and a  
3 half after January 29th, correct?

4 A Correct.

5 Q All right. Now, I'd like to ask you some  
6 questions about -- oh, by the way, you've had an iPhone  
7 since you were 12 or 13 years old?

8 A Correct.

9 Q And you are now old?

10 A Twenty.

11 Q So seven or eight years would be a good  
12 estimate as to how long you've worked with iPhones?

13 A Correct.

14 Q And, obviously, you know how an iPhone works,  
15 correct?

16 A Correct.

17 Q You know how to reply and comment on text  
18 messages, correct?

19 A Correct.

20 Q And you know that there is a lot of tools open  
21 to you to comment on text messages, correct?

22 A Correct.

23 Q You can reply to a text using an icon or an  
24 emoji, right, to like or dislike something that  
25 somebody else said?

1 A Correct.

2 Q You can laugh at it. You can love it. You  
3 can like it, correct?

4 MR. LALLY: Objection.

5 THE COURT: Overruled.

6 BY MR. YANNETTI:

7 Q Right?

8 A Correct.

9 Q They make it pretty easy, right? All you need  
10 to do is put your finger or your thumb on a specific  
11 message and hold it down and options appear, correct?

12 A Correct.

13 Q And that's where you give the thumbs up or  
14 thumbs down, the "haha," the exclamation points,  
15 question mark, et cetera?

16 A Correct.

17 Q And you also have other options which is down  
18 the bottom there, is a kind of a curved arrow where if  
19 you click on that, you can forward the message or reply  
20 to a specific message, correct?

21 A Correct.

22 Q And, on the left, there is a trash can, right?

23 A Correct.

24 Q And what happens when you click on the trash  
25 can?

1           A     It will delete the message from your phone.

2           Q     Okay. And it's your testimony that with  
3 regard to the screenshot that we saw, there are no  
4 deleted messages in that conversation, correct?

5           A     Yes.

6           Q     However, you would agree, as you've already  
7 testified, if a message had been deleted from a  
8 screenshot, we'd never know, right?

9           A     True.

10          Q     You're also familiar with the apps that are on  
11 iPhones, correct?

12          A     Correct.

13          Q     You have a number of apps on your iPhone,  
14 right?

15          A     Correct.

16          Q     There might be 12 or 15 -- I haven't counted  
17 them, but 12 or 15 maybe on your home screen, right?

18          A     Correct.

19          Q     And, if you swipe to the left, you get a new  
20 population of 12 or 15?

21          A     Correct.

22          Q     That's not bad for an old guy, right?

23          A     Yes.

24          Q     And you use apps like Instagram?

25          A     Correct.

1 Q Snapchat is a popular app?

2 A Correct.

3 Q And probably to your detriment but Life360?

4 A Uh-huh. Correct.

5 Q That's been an app in the McCabe family for a  
6 number of years, right?

7 A Correct. Yes.

8 Q And it's in your family, anyway, and probably  
9 in a lot of families, it's mainly used for the parents  
10 to keep track of their kids, right?

11 A Correct.

12 Q And, in order for Life360 to work, you have to  
13 have your location services on and somebody else has to  
14 have the app and it's in the family, correct, connected  
15 to you?

16 A Correct.

17 Q And, with regard to -- just going back to the  
18 messages for a minute, do you know the difference  
19 between an iMessage and a text message?

20 A Yes. I believe one is blue and one is green.

21 Q The screenshots that we saw of your text  
22 conversation that you say that you had with  
23 Colin Albert, you were in blue, right?

24 A Correct.

25 Q That means that Colin Albert also had an

1 iPhone at the time, correct?

2 A Correct.

3 Q Now, with regard to the timestamp on those  
4 messages, the conversation about I'm here, I believe it  
5 gave the time 12:10 a.m., correct?

6 A Correct.

7 Q Are you aware how easy it is to change that  
8 time?

9 A No.

10 Q Are you aware that all you need to do is go  
11 from settings to general and then there is a date and  
12 time that you can alter?

13 MR. LALLY: Objection.

14 THE COURT: Are you aware of that?

15 THE WITNESS: No. I didn't know that was a  
16 thing.

17 BY MR. YANNETTI:

18 Q You know that when you set up your iPhone, you  
19 have to choose a time zone, correct?

20 A Correct.

21 Q And you always choose the New York time zone  
22 because that's where Boston is, right?

23 A Correct.

24 Q Are you aware that if you go into settings,  
25 general and then date and time, you can change the time

1 zone to wherever you're going?

2 A I guess. Once I set my phone up, I have no  
3 reason to change the time.

4 Q And, in addition to changing the time zone,  
5 you literally can choose any time that you want. You  
6 could make 1:45 a.m. 12:10 a.m. in about three seconds.  
7 Did you know that?

8 MR. LALLY: Objection, Your Honor.

9 THE COURT: Do you know that? Did you know  
10 that?

11 THE WITNESS: No, I don't.

12 BY MR. YANNETTI:

13 Q I'm not accusing you of this now, but if you  
14 had changed the time on that from a screen shot, we'd  
15 have no way of knowing, correct?

16 A I guess.

17 Q Because what a screenshot ultimately becomes  
18 is like a photo, correct?

19 A Correct.

20 Q It's not like you can edit it, right?

21 A I mean, the most that you can do is what we  
22 saw on the other photo that was displayed, which is  
23 kind of crossing out with a magic marker somebody's  
24 face or a time, right? That would be how you'd have to  
25 alter it, right?

1 A Correct.

2 Q Now, I had asked you if prior to getting rid  
3 of your old phone and getting the new one if law  
4 enforcement ever asked you to, you know, go through the  
5 phone themselves, and you had said "no," right?

6 A Yes. They did not do that.

7 Q Right. And they never asked to do an  
8 extraction on the old phone, correct?

9 A No.

10 Q What about the new phone that you now have  
11 that you got in December? Have the state police ever  
12 asked to do -- have they ever asked to look through  
13 that phone?

14 A No. I don't think so.

15 Q You provided the screenshot that was shown to  
16 the jury today on August 25th when you talked to the  
17 state police in this case, right, of 2023?

18 A Correct.

19 Q And, when you provided them that screenshot,  
20 did they say, hey, by the way, can I look at your phone  
21 to see if it's on there?

22 MR. LALLY: Objection.

23 THE COURT: I'll allow that. Did they say  
24 that to you?

25 THE WITNESS: I don't remember.



1 BY MR. YANNETTI:

2 Q But, in any case, you never physically showed  
3 them your phone, right?

4 A No.

5 Q You don't recall clicking on that text message  
6 app, the green app with the kind of white speech  
7 bubble? You didn't click on that and click on the  
8 Colin Albert conversation and say, here it is, did you?

9 A No.

10 Q And, in addition to not asking you to see your  
11 new phone, they also did not ask you to do an  
12 extraction of your new phone, correct?

13 A Correct.

14 Q And, at some point in time, you realized that  
15 you'd have to be a witness in this case and have an  
16 unfortunate incident of having to talk to me, right?

17 MR. LALLY: Objection.

18 THE COURT: I am going to see counsel at  
19 sidebar.

20 (Whereupon, there was a sidebar conference as  
21 follows:)

22 THE COURT: I just want to let you know, the  
23 other day when Brian Albert, Jr. testified, he said  
24 he couldn't differentiate between the two hearings.  
25 One was for the harassment he and his family have

1 received. I think you're opening the door if you  
2 get another answer like that, and the Commonwealth  
3 can run with it. So focusing on the screenshot, it  
4 may be why she didn't do it before, why she felt  
5 the need to keep these things.

6 MR. YANNETTI: I see where the Court is going.  
7 Okay.

8 THE COURT: I'm just warning you on that.

9 MR. YANNETTI: I understand. I understand.

10 MR. LALLY: Thank you, Your Honor. I think  
11 the door is already open.

12 THE COURT: I think it is too. Okay.

13 (Whereupon, the sidebar conference concluded.)

14 BY MR. YANNETTI:

15 Q Okay. And, just to wrap this up, to this day,  
16 no extraction has been done on your phone, correct?

17 A Correct.

18 Q Now, when you had that Zoom and review on  
19 August 25th, you told the trooper that you drive Colin  
20 straight to his house after you picked him up on  
21 January 29th and then you went straight home, correct?

22 A Yes. I believe.

23 Q And you have previously testified back in  
24 August of 2023 that you believe you dropped Colin  
25 Albert at his home at around 12:15, 12:20 or so?

1 A Correct.

2 Q And, when you left -- by the way, you're very  
3 familiar with 34 Fairview, right?

4 A Correct.

5 Q That's family, correct?

6 A Correct.

7 Q You've been over there many, many, many times,  
8 correct?

9 A Correct.

10 Q And you're familiar with the neighborhood in  
11 terms of the streets that are around there, right?

12 A Correct.

13 Q And you've lived in Canton your whole life?  
14 I mean, when you were a baby you were in Stoughton.  
15 But, basically, you're a Canton girl, right?

16 A Yes.

17 Q And can you tell the jury the route that you  
18 took home from 34 Fairview? Actually, strike that.  
19 The route that you took to Colin Albert's house when  
20 you left 34 Fairview on January 29th?

21 A I don't remember specifically, but I would  
22 believe I drove up Fairview, then -- I don't know the  
23 streets.

24 Q If I suggested to you that the street closest  
25 to 34 Fairview was Cedarcrest and the one on the other

1 side is Chapman, does that refresh your memory?

2 A Yes. So Chapman.

3 Q So you would have gone up and gone to Chapman  
4 and taken a right or a left?

5 A I'm really bad with directions. When I got  
6 there, I went to the center of town and his house. I  
7 don't know specifically which way. I'm trying to think  
8 of it. I can't picture it.

9 MR. YANNETTI: Your Honor, may I just have a  
10 moment?

11 THE COURT: Yes.

12 BY MR. YANNETTI:

13 Q Are you familiar with Washington Street in  
14 Canton?

15 A Yes.

16 Q Would you have wound up on Washington Street?

17 A Yes.

18 Q And you're aware that the Canton library is on  
19 the corner of Washington and Sherman Street? Does that  
20 make sense?

21 A Yes.

22 Q So you would have passed by the library?

23 A Yes.

24 Q All right. Now, with regard to whether you  
25 went straight home, did you -- by the way, when you

1       went home, did you stay there?

2           A     Yes.

3           Q     So you were in the rest of the night?

4           A     Yes.

5           Q     Okay. And what time do you say that you  
6 arrived at home?

7           A     I'm not sure. Around 12:30-ish.

8           Q     Okay. With regard to Life360, would you agree  
9 with me that if you go on that app and you're trying to  
10 figure out where somebody in your family is, there is  
11 like a -- and let's say you want to know if somebody is  
12 home. There is like a circle that surrounds your home,  
13 correct?

14          A     Yes.

15          Q     So once you enter that circle, you know that  
16 Life360 gives an alert that said that you arrived at  
17 home, even though you are physically walking through  
18 the door, you are within that circle and that's the  
19 home circle, right?

20          A     Yes.

21          Q     Okay. On January 29th of 2022 at 12:04:53,  
22 you arrived within that home circle, correct?

23          A     Correct.

24          Q     And then at 12:06:55 on January 29th, you left  
25 that home circle, correct?

1 A Correct.

2 Q And then on January 29th of 2022 at 12:23:14,  
3 you completed a seven mile drive where your top speed  
4 was 42 miles an hour. Does that make sense?

5 A Correct.

6 Q And then you left home on January 29th of 2022  
7 at 12:23:14, as well. What that probably means,  
8 reading between the lines, is that you entered that  
9 home circle but then you didn't go home. You went  
10 through the home circle and completed a seven-mile  
11 drive somewhere, right?

12 A Yes. I thought I went home.

13 MR. LALLY: Objection, Your Honor.

14 THE COURT: I'm sorry. I didn't hear your  
15 answer.

16 THE WITNESS: I believe I went home. I was  
17 completing my drive at my house.

18 BY MR. YANNETTI:

19 Q But at 12:26 a.m. on January 29th, you left  
20 home again, right?

21 MR. LALLY: Objection, Your Honor.

22 THE COURT: Did you? Did you leave home?

23 THE WITNESS: I don't know. I don't remember.

24 THE COURT: Okay.

25 BY MR. YANNETTI:

1 Q And at 12:26 a.m. and 12 seconds, you arrived  
2 at the Canton High School, correct?

3 A No.

4 Q On January 29th of 2022 at 12:26:55, you  
5 completed a one-mile drive where your top speed was 43  
6 miles per hour, right?

7 A I don't believe so.

8 Q And then at 12:26:55 on January 29th, you left  
9 Canton High School and arrived at home on January 29th  
10 of 2022 at 12:29:28, correct?

11 A I do not know.

12 Q And then after arriving home again on January  
13 29th of 2022 at 12:29:29, you completed a 12-mile drive  
14 on January 29th of 2022 at 12:31:22; did you not?

15 A No.

16 Q And then you left home on January 29th of 2022  
17 at 1:08:15, right?

18 A I don't believe so.

19 Q And, ultimately, you went through the home  
20 bubble and the Canton High School bubble and you  
21 arrived at Canton High School on January 29th of 2022  
22 at 1:28 in the morning and eight seconds.

23 A Can I see what you're referring to?

24 Q Sure.

25 MR. YANNETTI: May I approach, Your Honor?

1 THE COURT: Yes.

2 BY MR. YANNETTI:

3 Q To make it easy -- I mean, you can read the  
4 whole thing. But where it says -- "Reference 16" is  
5 what I just asked you about. Feel free to read the  
6 whole thing.

7 A Okay.

8 Q And, if you would, read it silently to  
9 yourself and look up at me when you're done.

10 MR. YANNETTI: May I approach?

11 THE COURT: Yes.

12 BY MR. YANNETTI:

13 Q Did that help refresh your memory on where you  
14 were that night?

15 A No.

16 Q Do you still dispute that you went straight  
17 home and didn't leave there?

18 MR. LALLY: Objection.

19 THE COURT: Sustained.

20 BY MR. YANNETTI:

21 Q And, finally, I had just asked you about  
22 arriving at Canton High School on January 29th of 2022  
23 at 1:28:08. You arrived at home, within that home  
24 bubble, on January 29th of 2022 at 1:30 in the morning  
25 and 26 seconds, correct?



1 A What time did it say?

2 Q 1:30 in the morning and 26 seconds.

3 A And what time did it say I arrived at the high  
4 school?

5 Q The high school was 1:28:08.

6 A It wouldn't have taken me two minutes to go  
7 from the high school to my house. I'm confused.

8 Q Well, with regard to the -- if the high school  
9 was also one of the bubbles, one of the areas where you  
10 could be, right, on Life360?

11 A No.

12 Q If I may?

13 A Yes.

14 Q Okay. Did you say that on Life360 the Canton  
15 High School is not one of the areas that you're tracked  
16 in?

17 A What do you mean?

18 Q Do you remember we were talking earlier about  
19 how --

20 A Oh, like put in a location like that one's  
21 home, that one's the high school?

22 Q Yeah. So there are multiple locations like,  
23 you know, if your mother is looking for you, where are  
24 you.

25 A Yes.

1 Q Well, you're at D&E Pizza. You're at high  
2 school. You're at home. Right? I mean, those could  
3 be categories?

4 A Correct.

5 Q You've agreed that home was one of the  
6 categories?

7 A Correct.

8 Q And, having reviewed that, the Canton High  
9 School is also one of the categories, correct?

10 A I believe so.

11 Q All right. And, on January 29th of 2022, the  
12 last entry is that you completed a 12-mile drive on  
13 January 29th of 2022 at 1:32 in the morning and 23  
14 seconds. And that's the end of the activity.

15 Do you agree with me that that's when you  
16 finally stopped that night?

17 A I don't recall.

18 MR. YANNETTI: If I may have a moment?

19 THE COURT: Yes.

20 MR. YANNETTI: No further questions. Thank  
21 you, Your Honor.

22 THE COURT: All right. Mr. Lally?

23 MR. LALLY: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. LALLY:

1           Q     Now, Ms. McCabe, with regard to -- did you get  
2     rid of your prior iPhone or did you upgrade your  
3     iPhone?

4           A     Upgrade.

5           Q     And that would have been in December of 2022;  
6     is that correct?

7           A     Yes. I believe so.

8           Q     Was it sometime around Christmas?

9           A     Yeah, probably.

10          Q     And that could have been a present as far as  
11     getting a new iPhone or upgrading your iPhone?

12          A     Yes.

13          Q     Now, as far as any of the information that you  
14     were shown as far as the screenshot, did you in any  
15     way, shape or form alter or delete any of the content  
16     within that text message from January 28th and the 29th  
17     with Colin Albert?

18          A     No.

19          Q     With reference to changing times or time zones  
20     or anything on text messages, before Mr. Yannetti asked  
21     you any of those questions, were you aware of any of  
22     those things as things you could do with your phone?

23          A     No.

24          Q     With regard to Life360, what, if any,  
25     knowledge do you have as far as the accuracy of sort of

1 the timestamps that are contained within that app?

2 A Well, I'm not sure. But on the photo he  
3 showed me, it says, like, turn WiFi on. So like remind  
4 Alli to turn WiFi on. So that kind of affected the  
5 accuracy.

6 Q And that was on literally every single one of  
7 the alerts that was on that page that he showed you?

8 A Every single one.

9 Q Now, Canton High School. Do you know what  
10 street that's on?

11 A Washington Street, I believe. Yes.

12 Q And about how far a ride is it from Canton  
13 High School to your house?

14 A Seven, eight minutes. Ten. I'm not sure.

15 Q So if you were in the bubble of Canton High  
16 School at 1:28 in the morning, could you have possibly  
17 been in the bubble of your home at 1:30 in the morning?

18 A No.

19 Q You know, unless you were going 90 miles an  
20 hour in a snowstorm?

21 A No.

22 Q Now, you were asked some questions about that  
23 time frame of August of 2023 when you were asked and  
24 you turned over screenshots to troopers from the state  
25 police, correct?

1 A Correct.

2 Q And you were asked about previous times,  
3 indicating that you weren't asked and it wasn't  
4 relevant, correct?

5 A Correct.

6 Q Now, do you know why you were asked in August  
7 of 2023 versus any prior time period?

8 A Because Colin Albert wasn't in the house, and  
9 it was brought up here that he was.

10 Q And brought up where?

11 A By defense.

12 Q And, around that time of August 2023?

13 A I believe so, yes.

14 Q With reference to relevancy, is that what you  
15 were talking about?

16 A Correct.

17 Q And what, if anything else -- you're close  
18 friends with Colin Albert; is that correct?

19 A Correct.

20 Q What, if anything else either your family or  
21 Colin Albert and his family have undergone over the  
22 course of the pendency of this case?

23 MR. YANNETTI: Objection.

24 THE COURT: The door's been open. I'll allow  
25 it.

1 THE WITNESS: Well, basically harassment.

2 BY MR. LALLY:

3 Q And harassment by who?

4 A Bloggers, people online.

5 Q And what, if anything, in relation to  
6 Colin Albert being in the house has occurred as far as  
7 the harassment that you're talking about?

8 A Can you rephrase?

9 Q Sure. With reference to what you were talking  
10 about as far as the relevancy of Colin Albert being in  
11 the house at that time, what, if any, harassment was  
12 there in relation to that and in relation to Colin?

13 MR. YANNETTI: Objection.

14 THE COURT: Go ahead. She can answer.

15 THE WITNESS: Colin wasn't at the house. So  
16 he's being harassed for -- he was not at the house  
17 when John was there. So I drove him home. People  
18 are harassing him, saying he was at the house when  
19 it's not true.

20 BY MR. LALLY:

21 Q When you speak about harassment, what  
22 specifically type of harassment are we talking about?

23 A Phone calls. Constant phone calls, emails,  
24 awful messages.

25 MR. YANNETTI: Objection.

1 THE COURT: I'll allow it. Focus on this  
2 witness.

3 MR. LALLY: Yes.

4 BY MR. LALLY:

5 Q As far as you and your family, what, if any,  
6 type of harassment have you received?

7 A People showing up at our house. People  
8 emailing my school. Just a lot of harassment. Could I  
9 have a moment, please?

10 THE COURT: Sure.

11 THE WITNESS: Okay. I'm sorry.

12 BY MR. LALLY:

13 Q That's okay. And how long a period of time  
14 has that persisted for?

15 A A very long time.

16 MR. LALLY: Thank you, ma'am. I have no  
17 further questions.

18 MR. YANNETTI: I have nothing further.

19 THE COURT: All right, Ms. McCabe. You're all  
20 set.

21 THE WITNESS: Thank you.

22 (Whereupon, the witness is excused.)

23 THE COURT: Your next witness, Mr. Lally?

24 MR. LALLY: Yes, Your Honor. The Commonwealth  
25 would call Colin Albert to the stand.

1 Whereupon,

2 COLIN ALBERT

3 having been first duly sworn, was examined and  
4 testified as follows:

5 THE COURT: Whenever you're ready, Mr. Lally.

6 MR. LALLY: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. LALLY:

9 Q Good afternoon, sir.

10 A How are you?

11 Q Could you please state your name and spell  
12 your last name for the jury?

13 A Colin Albert, A-L-B-E-R-T.

14 Q And where do you live, sir?

15 A Canton, Mass.

16 Q And how long have you lived in Canton?

17 A My whole life.

18 Q And who, if anyone, do you live in Canton  
19 with?

20 A I live with my mother and my father and my two  
21 brothers.

22 Q And your mother and your father, what are  
23 their names?

24 A Julie and Chris Albert.

25 Q And your brothers, what are their names?



1 A Chris and [REDACTED] Albert.

2 Q And, as far as within the age of you and your  
3 two brothers, where do you fall in them?

4 A I am the middle child.

5 Q And how old are you, sir?

6 A I am 20 years old.

7 Q And do you work? Do you go to school?

8 A I go to school at Bridgewater State.

9 Q And what year are you in in there?

10 A I am going into my junior year.

11 Q Now, sir, if I could turn your attention to  
12 January 28th into January 29th of 2022, do you recall  
13 those days?

14 A Yes.

15 Q And do you recall what days of the week they  
16 were?

17 A I do not.

18 Q Do you recall whether it was a weekday,  
19 weekend?

20 A Weekend.

21 Q And, turning your attention to the evening of  
22 January 28th, do you recall where you went that night?

23 A Yes, I do.

24 Q And, just to be clear, around that time, were  
25 you in college? Were you in high school? What grade

1 were you in then?

2 A I was a senior in high school.

3 Q So end of January, you would have been about  
4 four months away or so from graduation, correct?

5 A Yes, sir.

6 Q And, on that evening, where did you -- at some  
7 point, did you leave your home and go out?

8 A Yes, I did.

9 Q And do you recall about what time it was that  
10 you went out?

11 A I do not remember.

12 Q Do you recall whether it was light or dark  
13 when you went out?

14 A It was dark.

15 Q And where did you -- upon leaving your house,  
16 where did you go?

17 A I went to one of my buddy's houses.

18 Q And, that buddy, what was his name?

19 A Mike.

20 Q And where does Mike live in relation to you?

21 A Can you rephrase that?

22 Q Sure. Does Mike live in Canton, as well?

23 A Yes, he does.

24 Q Okay. And about how far is it from your house  
25 to Mike's house?

1 A About like seven, eight minutes.

2 Q And, when you got to Mike's house, was it just  
3 you and Mike or who, if anyone, else was there?

4 A I do not remember who was there.

5 Q Was there more than just the two of you?

6 A Yes.

7 Q And, generally speaking, when you got to  
8 Mike's house, what is it that you did when you got  
9 there?

10 A I do not remember.

11 Q Now, as far as how you got from your house to  
12 Mike's house, do you recall how you got there?

13 A No. I do not remember.

14 Q Let me ask you this: Did you walk? Did you  
15 drive? Did you get a ride?

16 A I got a ride.

17 Q And do you recall who you got a ride from?

18 A No.

19 Q Do you recall -- let me ask you this: As far  
20 as that particular night that you went out, did you  
21 drink any alcoholic beverages while you were out?

22 A Yes.

23 Q And did you drink any of those at Mike's  
24 house?

25 A Yes.

1 Q And do you recall generally what you were  
2 drinking that night?

3 A Bud Light.

4 Q Okay. And, when you were at Mike's house on  
5 that particular evening, do you recall about how long  
6 you were there for?

7 A A few hours.

8 Q And do you recall how much you had to drink  
9 while you were at Mike's house?

10 A I do not remember.

11 Q And so in reference to you going out and going  
12 over Mike's house and having some beers over there, is  
13 that why you didn't drive?

14 A Yes.

15 Q So you got a ride from someone over to Mike's  
16 house. You spent some hours there. And then do you  
17 recall where you went from there?

18 A I went to my uncle's house.

19 Q Fair to say you have a relatively large  
20 extended family within Canton; is that correct?

21 A Yes.

22 Q And so when you say you went to your uncle's  
23 house, which uncle's house did you go to?

24 A My Uncle Brian.

25 Q And that would be the same last name as

1       yourself.   So Brian Albert?

2           A     Yes.

3           Q     And how is he your uncle?   Sort of how is he  
4       related to you?

5           A     He is my father's brother.

6           Q     And why did you go to your uncle's house that  
7       night?

8           A     It was my cousin, Brian's birthday.   So I went  
9       over to celebrate for a little bit with him.

10          Q     And so that would be Brian Albert, Jr.; is  
11       that right?

12          A     Yes, sir.

13          Q     And do you know how old your cousin,  
14       Brian Albert, Jr., was turning on that night?

15          A     I do not know.

16          Q     Do you recall how you got from Mike's house to  
17       your uncle's house?

18          A     I believe Alli McCabe.

19          Q     And do you know the address as far as your  
20       uncle's house?

21          A     34 Fairview Road.

22          Q     And is that somewhere -- it's your family's  
23       house.   Is that somewhere you'd been before?

24          A     Yes.

25          Q     And so your memory is that Alli McCabe gave

1 you a ride from Mike's house to the house on Fairview?

2 A From what I remember, yes.

3 Q Now, Alli McCabe, as far as -- who is that to  
4 you or what, if any, kind of relationship do you have  
5 with Alli McCabe?

6 A It is my cousin's cousin. So not technically  
7 my cousin, but we are close and like we do family  
8 events and stuff like that together.

9 Q And you and Ms. McCabe, are you in the same  
10 grade?

11 A Yes.

12 Q And how long have you know each other?

13 A My whole entire life.

14 Q So not blood related but someone that you see  
15 at family events?

16 A Yes.

17 Q And someone that was in the same grade and  
18 went to the same school as you?

19 A Correct.

20 Q And which school did you go to at that time?

21 A Canton High School.

22 Q And do you recall about what time it was that  
23 you arrived at the house on Fairview?

24 A Between 10:30 and 11:00 at night.

25 Q Did you have at that time any kind of a curfew

1 or time that you had to be home from your parents?

2 A Usually around like -- right around before  
3 midnight.

4 Q And so was it like a hard, fast, like, 12:00  
5 o'clock? If you're not here, you're grounded? Or was  
6 it sort of around that time?

7 A Just around. Just around midnight.

8 Q And so after -- when you arrive there, you go  
9 into the house; is that right?

10 A Yes.

11 Q And the house at 34 Fairview has a couple of  
12 different ways to get in the house in the front; is  
13 that correct?

14 A Correct.

15 Q And do you recall which way you went in that  
16 evening?

17 A The side door near the garage.

18 Q And, when you come into the house, where did  
19 you go within the house? What room did you go into?

20 A The living room.

21 Q Okay. And then from the living room, where  
22 else did you go within the house?

23 A The kitchen area.

24 Q And, within the kitchen area of the house,  
25 who, if anyone else, was present in the kitchen?

1           A     Like from what I remember, my cousin, Brian;  
2     Emily Fabbiano; Sara Levinson and Kathryn Doody, from  
3     what I remember that night.

4           Q     Is it possible there were other people there  
5     that you just don't recall?

6           A     Yes.

7           Q     And where were they situated sort of in the  
8     kitchen/dining room area?

9           A     Like sitting around the kitchen table, I would  
10    say.

11          Q     Now, after you arrived or when you arrived  
12    there, what is it that they were doing when you walked  
13    in?

14          A     Just listening to music and having a couple of  
15    drinks.

16          Q     And you come in. You greet people; is that  
17    correct?

18          A     Yes.

19          Q     Now, the other people that you talked about as  
20    far as beyond your cousin, Brian Albert, Jr., did you  
21    know those other people?

22          A     I knew of them. I wasn't friends with them or  
23    anything.

24          Q     Okay. Fair to say they were older than you  
25    were, correct?



1 A Correct.

2 Q So like Ms. Levinson would have been older  
3 than you by at least a few years at that point?

4 A Yes.

5 Q And the same with reference to I believe you  
6 said Ms. Fabbiano and Ms. Doody; is that correct?

7 A Correct.

8 Q Now, when you arrive at the house, did you  
9 have any other drinks once you got there?

10 A Yes.

11 Q And do you recall what, if anything, you drank  
12 once you got there?

13 A Bud Light.

14 Q So the same as you were having before?

15 A Correct.

16 Q And do you know how many that you had while  
17 you were at 34 Fairview?

18 A I do not remember.

19 Q And during the course of the evening, whether  
20 it was at Mike's house or in between or when you got to  
21 34 Fairview, did you feel yourself as far as like  
22 overly intoxicated or drunk or anything like that?

23 A No.

24 Q And, as far as the other people that you  
25 observed at the house that night, does anybody stick

1 out to you as being overly intoxicated or, you know,  
2 fall-down drunk or anything like that?

3 A No.

4 Q Now, with reference to when you came into the  
5 house, you mentioned that there was music playing. How  
6 would you describe sort of the general mood within the  
7 house?

8 A It was happy. It was -- yeah.

9 Q Now, as far as that area where you first  
10 observed the people around the table in the  
11 kitchen/dining room area when you came in, did you ever  
12 see anybody else go anywhere else in the house?

13 A Not that I remember.

14 Q Did you, yourself go anywhere else in the  
15 house?

16 A No.

17 Q At any point in time in the evening while you  
18 were there, did you go upstairs or downstairs in the  
19 basement or out in the backyard or anywhere else  
20 besides the kitchen/dining room area?

21 A No.

22 Q Beyond maybe the restroom at some point?

23 A Yeah. Other than that, no.

24 Q And about how long were you at your uncle's  
25 house that night to celebrate your cousin's birthday?

1 A Probably around like an hour and a half.

2 Q And so about what time would it have been that  
3 you left?

4 A 12:10.

5 Q And, with respect to your leaving the house,  
6 who, if anyone, did you contact to facilitate that?

7 A Can you rephrase?

8 Q Let me ask it in a much easier, better way.

9 A Okay.

10 Q As far as your plans were concerned as far as  
11 leaving the house, who, if anyone, did you reach out to  
12 to get a ride from the house?

13 A My friend, Alli McCabe.

14 Q And how did you reach out to her, if you know?

15 A I texted her.

16 Q And do you recall whether or not you had any  
17 sort of other communication -- well, let me step back  
18 and ask it this way:

19 At that point in time in January of 2022, you  
20 had Ms. McCabe's information saved as a contact in your  
21 phone; is that correct?

22 A Correct.

23 Q And, on prior occasions, had you had a chance  
24 to, you know, call that number from your cell phone  
25 that you had programmed in as Alli McCabe?

1 A Correct.

2 Q And, when you called that number, who, if  
3 anyone, answered the phone call?

4 A Alli.

5 Q Now, with respect to text communications, had  
6 you had text communications with that contact in your  
7 phone as Alli McCabe prior to that date of January  
8 28th?

9 A Yes.

10 Q And, when you had those conversations, did you  
11 then also have subsequent sort of in-person  
12 conversations with Alli McCabe, as well?

13 A Yes.

14 Q And, during those in-person conversations, was  
15 there any reference or anything talked about the  
16 content that had been previously sent and communicated  
17 via text?

18 A No.

19 Q Let me ask it in a better way. So you would  
20 have text communications with the person you put in as  
21 a contact as Alli McCabe, correct?

22 A Yes.

23 Q And then subsequent to having those  
24 communications, you would then speak to her either in  
25 person or over the phone, correct?

1 MR. YANNETTI: Objection.

2 THE WITNESS: Yes.

3 THE COURT: The objection is sustained.

4 BY MR. LALLY:

5 Q Following those text communications with the  
6 person you had input in your phone, what, if any,  
7 verbal conversations would you have in reference to the  
8 content of the text communication?

9 A I'm not sure what you're asking.

10 Q Did you talk to her in person about something  
11 you had talked to her about in text?

12 A No.

13 Q All right. Now, with reference -- on that  
14 specific date of January 28th, had you -- was text  
15 communications the only means by which you communicated  
16 with Alli McCabe, if you know?

17 A From what I remember, yeah.

18 Q And were there other means by which you would  
19 typically --

20 A From what I remember, yeah.

21 Q Okay. And were there other means by which you  
22 would typically communicate with her?

23 A If she wasn't answering her text, I'd give her  
24 a call. Yeah.

25 Q And were there apps or anything like that on

1 your phone that you would communicate with her, as  
2 well?

3 A Snapchat sometimes.

4 Q Now, with respect to Snapchat and your family,  
5 specifically your cousins, what, if any, sort of group  
6 Snapchat chains were there with respect to your family?

7 A Yes.

8 Q And, specifically, who were those sort of  
9 group Snapchat chains? Who was included within those?

10 A I have a Snapchat group because I Snapchat  
11 group chat with my cousins.

12 Q And you have cousins basically on your  
13 father's side and your mother's side, correct?

14 A Not on my mother's side, no.

15 Q You have no cousins on your mother's side?

16 A No.

17 Q And, with respect to the cousins on your  
18 father's side, would it be all of your cousins that  
19 were included within that?

20 A Not all of them, no.

21 Q So who of your cousins would be included on  
22 those kind of group Snapchat chains?

23 A My older brother, Chris; my younger brother,  
24 [REDACTED]; my cousin, Kevin; Brian; Brendon; Caitlin;  
25 Kayla. And I believe that is it.

1 Q And, if you recall, was there any  
2 communication on that group Snapchat chain in regard to  
3 Brian Jr.'s birthday on that date of January 28th or  
4 29th?

5 A No, not that I remember.

6 Q Okay. Now, with respect -- so you reach out  
7 to Ms. McCabe via text; is that correct?

8 A Yes.

9 Q And she agrees to pick you up?

10 A Yes.

11 Q And, at some point, are you made aware that  
12 she is at the home?

13 A Yes.

14 Q And how is it that she makes you aware that  
15 she's at the home?

16 A I got a text message from her that says "I'm  
17 here."

18 Q And, at any point in time while you were in  
19 the home, did Ms. McCabe come inside the home?

20 A No.

21 Q And so after you received that text message  
22 from Ms. McCabe, did you respond?

23 A Yes.

24 Q And do you recall what you responded?

25 A Coming.

1 Q And, from that communication after you sent  
2 that, about how long was it between the time that you  
3 sent that and the time that you came out?

4 A Between 30 seconds and a minute, I'd say.

5 Q And, when you came out of the house, do you  
6 recall which door you came out at that point?

7 A The side door next to the garage.

8 Q And, when you came out that door, who, if  
9 anyone, did you encounter as you were coming out?

10 A As I was walking out, I saw my Uncle Brian and  
11 my Aunt Nicole.

12 Q And you were going out and what were they  
13 doing?

14 A They were coming in.

15 Q And, in addition to your Uncle Brian and your  
16 Aunt Nicole, was there anybody else that you recall  
17 that was with them when they came into the house?

18 A No, not that I remember.

19 Q And what, if any, exchange did you have with  
20 your uncle and your aunt as you were going out and they  
21 were coming in?

22 A I just said, I'm going home. My mom wants me  
23 home. I love you guys. Bye.

24 Q And you then went outside of the house; is  
25 that correct?



1 A Correct.

2 Q And did you see Ms. McCabe outside?

3 A Yes.

4 Q And where was she in -- where was her vehicle  
5 in relation to the house?

6 A In the driveway.

7 Q Now, do you recall what type of vehicle  
8 Ms. McCabe was driving on that particular night or had  
9 at that time?

10 A I believe it was the blue Ford that they had.

11 Q And was that a sedan? Was that an SUV? What  
12 type of vehicle was that?

13 A A sedan.

14 Q And so you come out. That's in the driveway,  
15 correct?

16 A Correct.

17 Q Do you recall whether or not it was parked on  
18 the left side or the right side of the driveway?

19 A I do not remember.

20 Q And you get into the vehicle. Which part of  
21 the vehicle did you get into?

22 A That, I do not remember.

23 Q Front seat passenger side? Does that sound  
24 right?

25 A It could have been that, yeah.

1           Q     Do you recall whether or not there was anybody  
2 else in the vehicle at the time that you got in?

3           A     I do not remember that.

4           Q     And do you recall whether or not there was  
5 anybody else in the vehicle at the time that she had  
6 dropped you off at that location?

7           A     I do not remember that either.

8           Q     Now, as far as the coming outside of the  
9 house, did you take note of anything as far as the  
10 weather or what was going on with that when you came  
11 outside?

12          A     I'm pretty sure it just started snowing at  
13 that time.

14          Q     So the snow had just begun. Do you recall  
15 whether or not it was sticking or accumulating on the  
16 ground at that time?

17          A     I do not remember. No.

18          Q     Now, you get into the car and where did you  
19 go?

20          A     She drove me right home.

21          Q     So no stops along the way, just straight from  
22 Fairview to your house?

23          A     Correct.

24          Q     And about how long a drive is that?

25          A     Anywhere between five, 10 minutes.

1           Q     Now, as you were outside of the house, walking  
2     to the car and after the car sort of backs out of the  
3     driveway and leaves, do you observe anything abnormal  
4     or unusual outside of your uncle's house that night?

5           A     No.

6           Q     Did you observe any other cars outside at that  
7     time?

8           A     Not that I remember.

9           Q     Now, Alli has a mother and a father and you're  
10    familiar with them; is that correct?

11          A     Correct.

12          Q     And what are their names?

13          A     Jennifer and Matt.

14          Q     Same last name as McCabe?

15          A     Yes.

16          Q     And are you familiar with what types of  
17    vehicles they have?

18          A     Yes.

19          Q     And, when you came out of the house and got  
20    into Alli's Ford sedan, did you see any vehicle you  
21    would associate with either Jennifer or Matthew McCabe  
22    at the house at that time?

23          A     No.

24          Q     And so you drive home and you go to your  
25    house. Without the address, whereabouts within the

1 town of Canton were you living at that point?

2 A It's right in the center of Canton, near the  
3 Seasons gas station.

4 Q And is that a single-family house or a multi-  
5 family house or what is it?

6 A It is a condominium.

7 Q And, when Ms. McCabe pulls in and parks, you  
8 get out, correct?

9 A Yes.

10 Q And so in order to get into the building, is  
11 there -- in order to get into your home, is there --  
12 how is it that you get into your home when you get to  
13 the condominium?

14 A There is a door around back that I go into.  
15 And I've got to either have a key or they buzz me in.  
16 But I usually have a key. And I've got to go up three  
17 flights of stairs. And then we are at the top level in  
18 the condominium.

19 Q So you have to get sort of into the building  
20 before you can get into your own unit?

21 A Correct.

22 Q And did you notice whether or not Ms. McCabe  
23 was still there as you were -- excuse me. Did you  
24 notice whether or not Ms. McCabe was still out there  
25 parked when you opened the door with the key?

1           A     That, I do no remember.

2           Q     And you get into the condo or you get into  
3 your home. And who, if anyone, was living with you at  
4 that time?

5           A     My parents and my little brother.

6           Q     And your older brother, where was he?

7           A     In San Diego.

8           Q     He was in the service; is that correct?

9           A     Correct.

10          Q     And, as far as your brother, your little  
11 brother and your father and your mother, were they home  
12 when you got home?

13          A     Yes.

14          Q     And how do you know that?

15          A     Because I remember my parents being up in  
16 their bedroom that night.

17          Q     Is there any sort of rule or sort of, for lack  
18 of a better term, like protocol as far as when you come  
19 home? Where do you go sort of first thing when you  
20 walk in the door?

21          A     I always tell my mum and dad that I'm home and  
22 usually go up to their bedroom and give them a hug  
23 goodnight, tell them I love them and then go down to  
24 bed.

25          Q     And did you do that on that occasion?

1 A Yes.

2 Q So sort of immediately when you come home, you  
3 go right up to your parents' room?

4 A Yes.

5 Q And when you got up to your parents' room on  
6 that particular evening, was both your mother and your  
7 father in their room?

8 A Correct.

9 Q And you had that sort of exchange that you've  
10 described before?

11 A Yes.

12 Q So your bedroom is then located downstairs  
13 from where your parents' bedroom is?

14 A Yes.

15 Q And, if you know, about what time was it that  
16 you came into the house?

17 A I want to say around 12:20.

18 Q And fair to say this was two and a half years  
19 ago and you weren't exactly looking at your watch when  
20 you came in; is that right?

21 A Exactly, yes.

22 Q And, as far as being home or having that  
23 curfew around midnight or so, did you get in trouble  
24 for being late that night?

25 A No.

1 MR. YANNETTI: Objection.

2 THE COURT: I'll sustain the objection. It's  
3 stricken.

4 BY MR. LALLY:

5 Q Now, Mr. Albert, the place that you were  
6 living at that point in the condo, how long had you  
7 been living there?

8 A That, I do not remember.

9 Q Did you live somewhere else in Canton prior to  
10 that?

11 A Yes.

12 Q Okay. And where was it that you lived?

13 A 7 Meadows Ave.

14 Q And how long did you live at 7 Meadows Ave.?

15 A My whole entire life before moving to that  
16 condo.

17 Q And so all I'm sort of trying to ascertain  
18 here is so from the time of January 28-29th, 2022, was  
19 it a long time, short time, months, weeks, years? How  
20 long had you been living at the condo?

21 A A short time. I'd say a couple months.

22 Q Okay. And so prior to that couple months, you  
23 had lived your whole life at 7 Meadows Ave., correct?

24 A Correct.

25 Q And that was a single-family house; is that

1 correct?

2 A Yes.

3 Q And, with respect to living on Meadows Ave.,  
4 did you know the people that lived on your street  
5 growing up?

6 A Yes.

7 Q And, at some point while you were living  
8 there, did you come to know someone by the name of  
9 John O'Keefe?

10 A Yes.

11 Q And how did you know Mr. O'Keefe?

12 A He lived at the top of our street.

13 Q So how many houses, if you know, were sort of  
14 in between your house and Mr. O'Keefe's house?

15 A Two.

16 Q Do you know how long Mr. O'Keefe had been  
17 living on that street?

18 A I do not, no.

19 Q And how did you know him? If you could sort  
20 of describe sort of your relationship with your  
21 neighbor, Mr. O'Keefe?

22 A I knew him because I knew that my parents were  
23 friendly with him. So that's -- and I knew that he  
24 lived at the top of our street. That's how I knew him.

25 Q Were you aware who, if anyone, lived at the



1 house with Mr. O'Keefe?

2 A I know his kids that he brought in and adopted  
3 lived there. And I'm not sure who else.

4 Q And that would have been his niece and his  
5 nephew that he adopted, correct?

6 A Correct.

7 Q And where were they in relation to you as far  
8 as ages were concerned?

9 A A lot younger. I don't know the exact age  
10 difference, but --

11 Q So you were in high school. They would have  
12 been some grade far below?

13 A Yes.

14 Q Now, as far as your relationship with  
15 Mr. O'Keefe, your neighbor, about how often would it be  
16 that you would see him?

17 A Not often. I drive by. Every now and then  
18 he'd be outside and I'd wave and he'd wave back. That  
19 was pretty much it.

20 Q And, during the time that you lived on Meadows  
21 Ave. or a couple of months subsequent to that, was  
22 there ever any animosity or any sort of arguments or  
23 anything that you had ever had with Mr. O'Keefe?

24 A Never.

25 Q And how would you describe Mr. O'Keefe from

1 your perspective as far as how would you describe him  
2 as a person?

3 A A nice guy. A good guy.

4 Q Now, with respect to -- if I could bring you  
5 back to Fairview Road on January 28th and 29th of 2022,  
6 obviously, you were familiar with Mr. O'Keefe at that  
7 point?

8 A Yes.

9 Q And, at any point in time that you were in  
10 that home, did you see Mr. O'Keefe inside the home?

11 A No.

12 Q At any point in time that you were outside of  
13 the home, going in, coming out, at any point in time,  
14 did you see Mr. O'Keefe?

15 A No.

16 Q At any point in time on the evening of January  
17 28th, into January 29th of 2022, did you see  
18 Mr. O'Keefe anywhere?

19 A No.

20 Q And, at that time, the end of January 2022,  
21 were you aware of or did you know anybody by the name  
22 of Karen Read?

23 A Yes.

24 Q And how did you know her?

25 A I knew that she dated Mr. O'Keefe.

1 Q And had you had any sort of prior interactions  
2 with Ms. Read prior to January 28th?

3 A Not that I remember, no.

4 Q Okay. Did you know what she looked like?

5 A Not really.

6 Q As far as any interactions, would that be just  
7 sort of driving by the house?

8 A Yeah. Maybe drive by, wave. That was about  
9 it.

10 MR. LALLY: If I may have one moment, Your  
11 Honor?

12 THE COURT: Yes.

13 BY MR. LALLY:

14 Q Now, as far as that sort of reaching out to  
15 Ms. McCabe on that particular evening, was that  
16 something that you had done before?

17 A Yes.

18 Q Is that something that sort of you and your  
19 friend group did together as far as if somebody was out  
20 and driving around and somebody else was maybe drinking  
21 somewhere, they could contact them for a ride?

22 A Yes. Correct.

23 Q And that was as opposed to someone drinking  
24 and then getting behind the wheel and driving, correct?

25 A Exactly.

1 Q Now, sir, at some point in July of 2023, did  
2 you have occasion to meet with any troopers in regard  
3 to that evening of January 28th or 29th?

4 A Say the date again?

5 Q Sure. At some point in July of 2023, did you  
6 meet with any troopers from the state police?

7 A No.

8 Q At some point subsequent to that date of  
9 January 28-29th, did you meet with any troopers from  
10 the state police?

11 A Yes.

12 Q And you were asked questions and you answered  
13 them; is that correct?

14 A Correct.

15 Q And, following that conversation or interview  
16 that you had with troopers from the state police, what,  
17 if anything, did you provide them with reference to  
18 your phone?

19 A Can you rephrase that? I'm sorry.

20 Q Sure. At some point, did you provide them  
21 with a screenshot of a text communication between  
22 yourself and Ms. McCabe?

23 A Yes.

24 Q And was that something that you took a  
25 screenshot on your own phone and then were you able to

1       then provide it to them?

2           A     Correct.

3           MR. LALLY: Your Honor, may I approach?

4           THE COURT: Yes.

5       BY MR. LALLY:

6           Q     I'm showing you a document. I'd just ask you  
7       to look up -- look at it and then look up when you're  
8       finished.

9           A     (Witness complies.)

10          Q     And do you recognize that, sir?

11          A     Yes.

12          Q     And what do you recognize that to be?

13          A     My text messages between Alli that night.

14          Q     And what's contained on that, is that a fair  
15       and accurate portrayal of what you recall as far as the  
16       text messages or what was on your phone as far as what  
17       you took a screenshot of, of the text messages between  
18       you and Alli McCabe that night?

19          A     Yes, sir.

20          MR. LALLY: May I approach again, Your Honor?

21          THE COURT: Yes.

22          MR. LALLY: The Commonwealth would seek to  
23       introduce and admit it as the next exhibit.

24          THE COURT: Mr. Jackson?

25          MR. JACKSON: May I have one moment, please?

1 THE COURT: Sure.

2 MR. JACKSON: No objection. Thank you.

3 THE COURT: Jurors, remember the instruction I  
4 gave you about the text messages.

5 (Whereupon, screenshot of texts was entered and  
6 marked Exhibit No. 84 in Evidence.)

7 THE COURT REPORTER: That will be Exhibit 84,  
8 Your Honor.

9 MR. LALLY: Your Honor, may I approach just to  
10 return it to the witness?

11 THE COURT: Yes.

12 MR. LALLY: And, Your Honor, with the Court's  
13 permission, may I publish this before the jury?

14 THE COURT: Okay.

15 BY MR. LALLY:

16 Q And, sir, what's up on the screen, is that  
17 what you have before you as Exhibit 84?

18 A Yes.

19 Q And the contact that's listed at the top  
20 states "Alli"; is that correct?

21 A Correct.

22 Q And is that how you had Ms. McCabe programmed  
23 into your phone?

24 A Correct.

25 Q And, from this, there are two sets of

1 communications: one contained in blue bubbles and one  
2 contained nonblue bubbles, correct?

3 A Yes.

4 Q If you know, the blue bubbles, is that you or  
5 is that Ms. McCabe or who is it?

6 A That's me.

7 Q So the other side would be Ms. McCabe; is that  
8 correct?

9 A Correct.

10 Q And there is also times that are stamped or  
11 associated with these text bubbles or the text  
12 communications with Ms. McCabe?

13 A Yes.

14 Q And if I could direct your attention. It may  
15 be easier if you are looking at the paper in front of  
16 you. But just sort of starting from the top, January  
17 28th, 2022, if you could read for the jury who -- what  
18 the content is, what the time is and indicate who is  
19 communicating.

20 A At 11:54, I texted Alli and said, you can  
21 get me now. At 11:14, I texted her again and said,  
22 if easier. At 11:55, Alli texted me back and said,  
23 okay. I am driving people home now. At 11:55, I said,  
24 word. And then at 11:55, I said, get me after. At  
25 11:55, Alli wrote back, KK. And then at 12:10 a.m.,

1       Alli wrote, here. And at 12:20 a.m., I wrote back,  
2       okay.

3               MR. LALLY: Ms. Gilman, you can take that  
4       down.

5               Your Honor, may I approach just to retrieve  
6       the exhibit?

7               THE COURT: Yes.

8       BY MR. LALLY:

9               Q     Now, sir, with respect to that last  
10       communication that you sent as far as "okay," how long  
11       after that message was sent did you then go out to the  
12       car where Alli was?

13              A     Right after, I'd say. Around 30 seconds.

14              MR. LALLY: And, Your Honor, may I approach  
15       the witness again?

16              THE COURT: Yes.

17       BY MR. LALLY:

18              Q     Sir, I'm showing you what's been marked as  
19       Exhibits 82 and 83. Again, I'd just ask you to take a  
20       look at those and look up when you're finished.

21              A     (Witness complies.)

22              Q     And do you recognize those, sir?

23              A     Yes.

24              Q     And what do you recognize those to be?

25              A     It's --



1 Q What is in those photographs?

2 A A picture of me and my aunt and a picture of  
3 me by myself.

4 Q And do you recall sort of when those  
5 photographs were taken?

6 A Yes. February 11th.

7 Q And why is it that you recall that -- well,  
8 let me ask you this: As far as February 11th was  
9 concerned, where were you that evening?

10 A I was at my uncle's house.

11 Q And why were you at your uncle's house on that  
12 evening?

13 A My cousin was coming home for leave from  
14 the Marine Corps. So we had a little gathering for  
15 him.

16 Q And, just to be clear, when you say "your  
17 uncle," you're talking about your uncle, Brian Albert,  
18 again?

19 A Correct.

20 Q And your cousin that was coming home from the  
21 Marines, what's his name?

22 A Jack Albert.

23 Q So on that evening you were over that house;  
24 is that correct?

25 A Correct.

1 Q And the first picture in I believe it's 82, is  
2 that correct, you and your Aunt Nicole?

3 A Correct.

4 Q And what is contained on there, is that a fair  
5 and accurate portrayal of sort of what you looked like  
6 as far as your arms, your hands, your face, all of  
7 those things on that date of February 11th?

8 A Correct.

9 Q And the second photograph is again you by  
10 yourself, is that correct?

11 A Correct.

12 Q And, from that photograph again, is that a  
13 fair and accurate portrayal of what you looked like on  
14 February 11th?

15 A Yes.

16 Q And, from the second photograph in, if you  
17 know, where was that taken within the home of your  
18 uncle?

19 A In the library at 34 Fairview.

20 Q And, again, that library or any of the other  
21 rooms within the house beyond the kitchen, the dining  
22 room or possibly the restroom, did you go into any  
23 other areas of the house on that night of January 28th,  
24 into January 29th?

25 A No.

1 MR. LALLY: May I approach just to retrieve,  
2 Your Honor?

3 THE COURT: Yes

4 MR. LALLY: One moment, Your Honor?

5 THE COURT: Yes.

6 BY MR. LALLY:

7 Q Now, Mr. Albert, just one last question: When  
8 it came to your arrival at 34 Fairview Road on the  
9 evening or the early morning of January 29th, when you  
10 were leaving, beyond your Uncle Brian and your Aunt  
11 Nicole, did you see anybody else older than yourself or  
12 anybody else related to that group come into the house  
13 that evening?

14 A No.

15 MR. LALLY: Thank you, sir. I have nothing  
16 further.

17 THE COURT: Mr. Jackson, do you want to begin  
18 or wait until the morning?

19 MR. JACKSON: Your Honor, it probably makes  
20 more sense to wait until tomorrow morning. Thank  
21 you.

22 THE COURT: All right. Mr. Albert, I'd ask  
23 you to wait until the jurors leave and then you can  
24 follow them out.

25 All right. Jurors, I do have to caution you.

1 Please do not discuss this case with anyone. Do  
2 not do any independent research or investigation  
3 into the case. If you happen to see, hear or read  
4 anything about the case, please disregard it and  
5 let us know. Tomorrow is a half day. We'll see  
6 you tomorrow morning at nine.

7 (Whereupon, the jury is escorted from the courtroom  
8 and excused until tomorrow morning.)

9 THE COURT: All right. Do you need me for  
10 anything, any evidentiary issues, any exhibits that  
11 we need to go through to avoid sidebar time  
12 tomorrow?

13 MR. LALLY: Not for the Commonwealth, your  
14 Honor.

15 MR. JACKSON: Not on behalf of Ms. Read.

16 THE COURT: Okay. We will start at 9:00  
17 o'clock tomorrow morning.

18 MR. LALLY: Yes, Your Honor.

19 (Whereupon, the Court adjourned at 3:50 p.m.)  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

I, Paula M. Mills, retired certified court reporter, do hereby certify that the foregoing pages, page 18-4 to 18-293, is a true and accurate transcription of the voice recording in the aforementioned matter to the best of my skill and ability.

This, the 11th day of February, 2025.

\s\ Paula M. Mills

Paula M. Mills

Retired Certified Court Reporter  
and Court Transcriptionist

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